SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 229.

THE UNITED STATES, APPELLANT,

vs.

JUAN PEDRO CAMOU.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA,

Territory of Arizona, ss:

Be it remembered that heretofore, to wit, on the third day of December, A. D. 1891, Juan Pedro Camou, by his attorney, William Herring, esq., filed in the office of the clerk of the Court of Private Land Claims, at Santa Fé, in the Territory of New Mexico, a petition, which said petition is in the words and figures following, to wit:

United States Court of Private Land Claims, December Term, 1891, Santa Fé, New Mexico.

JUAN PEDRO CAMOU, PLAINTIFF, }
vs.
UNITED STATES, DEFENDANT. }

The above-named plaintiff, petitioner herein, appearing by his attorney, William Herring, alleges:

I.

That he is a citizen of the Republic of Mexico, and that his place of residence is at the city of Guaymas, in the State of Sonora.

II.

That petitioner claims the lands hereinafter described and referred to under a title derived from the Mexican Government that was complete and perfect at the date when the United States acquired sovereignty in the Territory of Arizona, within which said lands are situate.

III.

That petitioner is the owner in fee of that certain tract or parcel of land situate, lying, and being in the county of Cochise, in the Territory of Arizona, known and designated as the San Rafael de Valle grant, which is hereinafter more particularly described; that petitioner became such owner by purchase and claims title to the lands embraced within said grant through various mesne conveyances from the original grantee thereof, who derived his title by grant and conveyance from the Mexican Government.

IV.

That the grant herein described and referred to was duly made to Rafael Elias, a citizen of the State of Sonora, of the Republic of Mexico, by Jose Maria Mendoza, treasurer general of the State of Sonora, on the twenty-first day of April of the year one thousand eight hundred
2 and twenty-eight, and the title to said grant was thereafter issued to said Rafael Elias on the twenty-fifth day of December, one thousand eight hundred and thirty-two.

That the same was duly made and issued pursuant to the laws of the State of Sonora under and by authority of the laws of the Republic of Mexico in such respect made and provided.

That the form of the grant issued under the authority aforesaid is a written title or patent reciting all the steps or proceedings that had been had in the matter of the lands sold and granted as aforesaid.

That said grant is situate in the San Pedro Valley, in the county of Cochise, Territory of Arizona. It lies between the range known as the Huachuca Mountains and the range known as the Mule Mountains. Its southern line is about six miles north of the southern boundary of the Territory of Arizona. Its northern boundary is about ten miles southwesterly from the city of Tombstone, in the county of Cochise, and about three miles southerly from the old town of Charleston, in said county.

Said land is more particularly bounded and described as follows, according to the calls of the survey of said ranch or grant as made by the Government of Mexico, as set forth in the expediente or title issued to Rafael Elias, the original grantee:

Taking as a center a fixed point where there were some small hills and taking the route to the south, there were measured and counted two hundred Spanish cords to the line of the survey of the ranch of San Pedro granted to Don Jesus Perez, the monument standing upon said survey lines being then and there taken as the limit of the San Pedro grant on the north and the limit of the San Rafael del Valle grant on the south. Returning to the center, the route to the part of the north was taken, measuring and counting two hundred Spanish cords, which ended on the same valley where there is a little calcarious or limy knoll or hill, at which place a monument was erected. Returning to the center, there were measured and counted towards the east fifty Spanish cords, which ended on the valley in front of the Mule Mountains, at which place a monument of stone was erected. Returning from said point to the center, the measuring was continued from said center on the west side, measuring and counting fifty Spanish cords, which ended on the same valley fronting the Huachuca Mountains, where there was also erected a monument of stones. One hundred Spanish cords were measured on the one and the other extreme of the end of the line running south and north, thus squaring up the ends and placing at the ends of said north and south line monuments of stone.

The grant in question, according to the survey and map thereof by George J. Roskruge, C. E., June 1st, 1891, contains twenty thousand and thirty-four acres and sixty-two one-hundredths.

Said map is herewith filed with the clerk of this court, and reference is hereby made thereto for a more particular description of said grant, its boundaries and dimensions.

3 V.

The following are the names of persons in possession of portions of said grant, having the portions so possessed otherwise than by lease or permission of this petitioner, to wit:

Cornelius Harrington, Stark Suydam, H. W. Hasselgren, Charles G. Johnson, R. B. Clark, James Wolf, A. M. Hamm, J. E. Hamm, William F. Banning, Frank Valenzuela, Levi Scranton, Ramon Escalante, Simon P. Gallen, Hilaria Gomez, W. C. Green, Packard Cattle Company, Charles Anchutz, and Joseph Hoefler.

Petitioner alleges that the possessions and claims of the above-named persons to said portions are without any right whatever.

VI.

Petitioner further alleges that the validity of said claim and grant herein described and referred to has heretofore been considered and acted upon by the authorities of the United States, to wit, by John Wasson, surveyor-general of Arizona, pursuant to an act of Congress approved July 15th, 1870, and departmental instructions of January 5th, 1877.

That the aforesaid act of Congress made it the duty of the surveyor-general of Arizona to "ascertain and report upon the origin, nature, character, and extent of the claims to lands in said Territory under the laws, usages, and customs of Spain and Mexico."

That under said authority the said surveyor-general examined into the validity of the San Rafael del Valle grant, herein referred to, and authorized a survey thereof and reported thereon favorably and recommended the confirmation of the said grant by Congress, which said report is on file in the U. S. Land Office.

Petitioner refers to the documents herewith filed for a more particular deraignment of petitioner's title and prays that the validity of his title and claim may be inquired into and decided by this honorable court.

Dated November 24th, 1891.

JUAN PEDRO CAMOU, *Petitioner*,
By his attorney, WILLIAM HERRING.

TOMBSTONE, ARIZONA.

(Endorsed:) Filed December 3, 1891. James H. Reeder, clerk, by Irenio L. Chaves, deputy.

[Endorsed:] (Original verified.)

And be it further remembered that on said 3rd day of December, 1891, a summons was issued by the clerk of said court, which summons, with all endorsements thereon, is in the words and figures following, to wit:

4 *Summons.*

In the U. S. Court of Private Land Claims.

[Vignette.]

UNITED STATES OF AMERICA,
Santa Fé, N. M., ss:

JUAN PEDRO CAMOU, PLAINTIFF,
versus
THE UNITED STATES OF AMERICA, defendant.

Petition filed in the clerk's office this 3d day of December, A. D. 1891.

The President of the United States of America to the United States marshal for New Mexico, greeting:

You and each of you are hereby notified that an action has been brought in said court by Juan Pedro Camou, plaintiff, against you as defendant under the provisions of the act of the Congress of the United States entitled "An act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of

said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court on or before the third day of the term of said court to be held at Santa Fé, N. M., on the 1st day of December, 1891; and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fé, N. M., in said district, this 3rd day of December, A. D. 1891, and of the Independence of the United States the 115th year.

[Seal U. S. Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENIO L. CHAVES,
Deputy Clerk.

(Endorsed:) Gen. No. 3, U. S. Court of Private Land Claims, Santa Fé, N. M. Juan Pedro Camou, plaintiff, versus The United States of America, defendant. Summons. Filed this 3d day of December, A. D. 1891. James H. Reeder, clerk, by Irenio L. Chaves, deputy clerk. Wm. Herring, of Tombstone, Arizona, attorney for plaintiff.

5 *Proof of service.*

UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

SANTA FÉ, *Dec. 3rd, A. D. 1891.*

I hereby certify that I received the within writ on the 3rd day of December, A. D. 1891, and that I have personally served the same upon the said defendant's attorney, Matt. G. Reynolds, by delivering to him.

This writ therefore returned to court as the law directs this 3rd day of December, A. D. 1891.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO, *Deputy Marshal.*

Marshal's fees.

Service, 1 defendants, at $4 ..... $4.00

And be it further remembered that thereafter, to wit, on the 5th day of February, 1892, a demurrer was filed; which demurrer is in the words and figures following, to wit:

United States Court of Private Land Claims, March term, 1892, Santa Fé, New Mexico.

JUAN PEDRO CAMOU, PLAINTIFF,
vs.
UNITED STATES, DEFENDANT. } No. 3.

Demurrer.

Comes now the United States and demurs to the petition filed in this court by Juan Pedro Camou seeking a decree of confirmation of a private land claim commonly called and designated therein as the "San

Rafael del Valle grant," situate in the Territory of Arizona, and for grounds of demurrer assigns the following, viz:

First. The petition does not state facts sufficient to constitute a cause of action against the United States.

Second. That said petition does not state, either in form or substance, under and by virtue of what decree of law the Republic of Mexico the State of Sonora acquired the title to said property, nor does it state under and by virtue of what laws or decrees of the State of Sonora said Jose Maria Mendoza, treasurer-general of the State of Sonora, derived his authority to convey said land to Rafael Elias.

Third. That said petition does not state what conditions, if any, were imposed upon the grantees, and, if so, whether they have been complied with or waived.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

6 And be it further remembered that thereafter, to wit, on the 21st day of February, 1893, at the February term of said court, held at Tucson, in the Territory of Arizona, the following proceedings were had:

Comes William Herring, esq., attorney for the petitioner, and confesses the demurrer filed herein and by leave of the court amends the petition herein and files amended petition as follows, to wit:

United States Court of Private Land Claims.

JUAN PEDRO CAMOU, PLAINTIFF,
vs.
UNITED STATES, DEFENDANT.

The above-named plaintiff, by leave of the court, hereby amends the complaint and petition filed herein and by said amended complaint and petition alleges as follows:

I.

That he is a citizen of the Republic of Mexico, and that his place of residence is at the city of Guaymas, in the State of Sonora, Mexico.

II.

That petitioner is the owner in fee of that certain tract or parcel of land situate, lying, and being in the county of Cochise, Territory of Arizona, in the San Pedro Valley, on both sides of the San Pedro River, between the range of mountains known as the Huachuca Mountains and the range known as the Mule Mountains.

Its southern boundary line is about six miles north of the southern boundary line of the Territory of Arizona. Its northern boundary line is about ten miles southwesterly from the city of Tombstone, in said county, and about three miles southerly from the old town of Charleston,

in said county; that the tract or parcel of land is known and designated as the San Rafael del Valle grant, and is more particularly described as follows:

Commencing at a post marked "S. R. G. No. 8," set in a mound of rocks on the summit of a "Limy Hill," said monument being the north center monument of the San Rafael del Valle private land grant, and was located as such north center monument by Solon M. Allis, U. S. deputy surveyor, December 15th, 1879, from said post on "Limy Hill" the Bronkow Hill bears N. 12° 21′ W.; Mount Wrightson, in the Santa Rita Mountains, bears N. 80° 49′ W.

The dwelling house of Cornelius Harrington bears S. 3° 10′ E., 3,900 feet dist.

The highest peak in the Huachuca Mountains bears S. 34° 50′ W.

Thence run N. 85° E. 6,204 feet to the northeast corner of grant.

Thence S. 13° 45′ E. 68,050 feet to the southeast corner of grant.

Thence west 6,875 feet to the south center of grant.

Thence west 6,875 feet to the southwest corner of grant.

7 Thence N. 12° 50′ W. 66,250 feet to the northwest corner of grant.

Thence N. 81° E. 6,600 feet to the post marked S. R. G. No. 8, erected on the "Limy hill," the place of beginning of the survey of the exterior boundaries of the San Rafael del Valle private land claim, containing 20,034.62 acres.

III.

That petitioner became the owner of said land by purchase, and claims title to said lands and premises embraced within said grant through various mesne conveyances from the original grantee thereof, Rafael Elias, who duly acquired his ownership and derived his title thereto by grant and convevence from the duly constituted and authorized authorities of the State of Sonora, Mexico, under and by the authorization and sanction of the laws of the State of Sonora and of the Republic of Mexico.

That the title to said lands and premises so derived and acquired as aforesaid was complete and perfect at the date when the United States acquired sovereignty in the Territory of Arizona, within which said lands are situate.

IV.

That said grant was made and a patent issued therefor to said Rafael Elias under and by virtue of article 11 of the sovereign decree, No. 70, of the general congress of the Republic of Mexico of the 4th of August, 1824; and the said patent was issued to said Rafael Elias on the 25th day of December, 1832, by Jose Maria Mendoza, treasurer-general of the State of Sonora, in accordance with the above decree, and under and by virtue of law No. 30 of the 20th of May, 1825, of the State of Sonora and Sinaloa (the constituent congress of the free, independent, and sovereign State of the West), regulating the system of selling the public lands.

That the condition imposed upon the grantee, his children, heirs, and successors, was that they must keep, settle, and protected the said lands

without their being depopulated, deserted, or abandoned for any time, with the understanding that if their total abandonment took place for the space of three consecutive years and there should be any person who petitioned for them in such event, such fact being previously proven, they will be declared public property and will be granted anew in favor of the highest bidder, excepting those cases in which the abandonment be on account of notorious invasion of public enemies and the period of such happening.

V.

That the grantors and predecessors in interest of petitioner upon the issuing of said patent duly entered into the possession of said granted lands and premises and settled and protected the same and kept the same according to said conditions, and have complied with said conditions, except in cases when they have been compelled to leave said land in consequence of the invasion and hostility of the Apache Indians.

8 That no breach of the conditions of said grant was ever claimed by the Republic of Mexico or the State of Sonora; that said grant had been duly located and duly recorded in the archives of Mexico prior to the twenty-fifth day of September, referred to in Article VI of the Gadsden treaty; that the grantors and predecessors in interest of petitioner, who were the owners of said grant at the time of the adoption of the treaty of Guadalupe Hidalgo and of the Gadsden treaty, were Mexicans—citizens of the Republic of Mexico.

That said lands and premises, except as aforesaid, have remained in the uninterrupted and peaceable possession of petitioner and his grantors and predecessors in interest.

VI.

That the grant in question, according to the survey and map thereof by George J. Roskruge, C. E., June 1st, 1891, contains twenty thousand and thirty-four acres and sixty-two hundredths.

Said map is herewith filed with the clerk of this court and reference is hereby made thereto for a more particular description of said grant, its boundaries and dimensions.

VII.

The following are the names of persons in possession of portions of said grant having the portions so possessed otherwise than by lease or permission of this petitioner, to wit: Cornelius Harrington, Stark Suydam, H. W. Hasselgren, Charles G. Johnson, R. B. Clark, James Wolf, A. M. Hamm, J. E. Hamm, William F. Banning, Frank Valenzuela, Levi Scranton, Ramon Escalante, Simon P. Gallen, Hilaria Gomez, W. C. Green, Packard Cattle Company, Charles Anschutz, and Joseph Hoefler.

Petitioner alleges that the possessions and claims of the above-named persons to said portions are without any right whatever.

VIII.

Petitioner further alleges that the validity of said claim and grant herein described and referred to has heretofore been considered and acted upon by the authorities of the United States, to wit, by John Wasson,

surveyor-general of Arizona, pursuant to an act of Congress approved July 15th, 1870, and departmental instructions of January 5th, 1877.

That the aforesaid act of Congress made it the duty of the surveyor-general of Arizona to "ascertain and report upon the origin, nature, character, and extent of the claims to lands in said Territory under the laws, usages, and customs of Spain and Mexico."

That under said authority the said surveyor-general examined into the validity of the San Rafael del Valle grant herein referred to, and authorized a survey thereof, and reported thereon favorably and recommended the confirmation of the said grant by Congress, which said report is on file in the U. S. Land Office.

9 IX.

Petitioner alleges that in the examination of the "origin, nature, character, and extent" of the San Rafael del Valle grant by the surveyor-general of Arizona, petitioner and his then co-owners presented their claim of title and filed the same in the U. S. surveyor-general's office at Tucson; that annexed to said claim or petition and filed therewith as exhibits were the original documents and title papers, which show petitioner's title to said grant to be valid; that in his report upon said grant to the U. S. General Land Office, dated October 29th, 1879, the U. S. surveyor-general filed in the U. S. General Land Office, at Washington, the aforesaid exhibits were included and filed therewith.

Petitioner therefore refers to said exhibits, papers, and documents now in the custody of the United States Government in connection with other papers and documents filed herewith showing the deraignment of his title to said grant, and petitioner prays that the U. S. surveyor-general of Arizona, and the authorities of the U. S. General Land Office, at Washington, may be required to transmit to this court all original documents and papers in their possession or official custody in relation to petitioner's title to said grant, or that otherwise the official report of U. S. Surveyor-General John Wasson for Arizona, dated October 29th, 1879, in relation to the origin, nature, and character of the San Rafael del Valle grant, a certified copy of which is hereto annexed, may be received and accepted by this court in relation to the contents of said exhibits and in relation to the title of petitioner to the aforsaid grant.

Wherefore plaintiff prays that the validity of his title and claim may be inquired into and decided and determined by this honorable court.

(Signed) JUAN PEDRO CAMOU, *Petitioner.*
(Signed) WILLIAM HERRING,
Attorney for Petitioner, Tombstone, Arizona.

San Rafael del Valle.

Report of the Surveyor-General.

The original title papers filed as exhibits to the petition of claimants in this case show that on the 12th day of March, 1827, Rafael Elias petitioned the treasurer-general of Sonora for a grant of vacant lands bounding with the Rancho San Pedro, in the jurisdiction of Santa Cruz, as far as the point of "Tres Alamos," stating that he needed the same for the pasturage of his stock.

Original title papers also show that on the 25th of December, 1832, the Government of the State of Sonora granted and sold to the petitioner, Rafael Elias, the rancho or tract of land called "San Rafael del Valle," containing four square leagues, situated within the jurisdiction of the presidio of Santa Cruz, and now within the limits of the Territory of Arizona, under the boundaries as set forth in the field notes of the survey which preceded the grant.

This grant was made under and by virtue of article 11 of the sovereign decree No. 70 of the General Congress of the Republic of Mexico, of the fourth of August, 1824, and in accordance with law No. 30 of the twentieth of May, 1825. (See Exhibit A, annexed to the petition.)

Petitioners claim title from the legal heirs of the original grantee, Rafael Elias, as is set forth in the following exhibits:

1st. Conditional sale or mortgage executed on the twenty-fifth day of July, 1862, by Jose Juan, Jose Maria, Manuel Elias, and Guadalupe Perez de Elias, heirs of Rafael Elias, the grantee, to Camou Brothers (Exhibit B).

2nd. Judicial enquiry before the judge of the district court of Guaymas in relation to the family of the original grantee, Rafael Elias, together with the power of attorney from Dona Guadalupe Perez (widow of Rafael Elias) and of her son, Manuel Elias, to Jose Maria Elias, authorizing him to confirm the sale made by the heirs of the grantee jointly with Jose Juan Elias, deceased, and Jose Maria Elias, children of Guadalupe Perez de Elias (Exhibit C). This exhibit shows that on the seventeenth day of March, 1869, J. P. Camou, one of the firm of Camou Brothers, made a petition to the judge of the district court of Guaymas, accompanying the same with a set of interrogatories which he asked to be propounded to Jose Ma. Elias in his own behalf and that of his mother, Guadalupe Perez, and his brother, Manuel Elias, and that the same interrogatories be propounded to Bernardina Lucero, widow of the deceased Jose Juan Elias. The court granted the order and the witnesses were summoned; whereupon Jose Ma. Elias, in answer to the interrogatories propounded, testified as follows: It is true that a sale was made of the lands mentioned in the interrogatories to the house of Camou Brothers, represented by Juan P. Camou, and which sale he, the witness, confirmed in his own behalf and in behalf of his mother, Guadalupe Perez, and of his brother, Manuel Elias, in accordance with the especial power of attorney which he now produced; that all of these lands were acquired by right of inheritance from their deceased parents, they being the only heirs and entitled to the same; that it was true that his grandfather and his father, Rafael Elias, had the same name; that sometimes they would sign adding the name of "Jose," and the surname of Gonzales, but notwithstanding these variations it meant the same person. The other witnesses summoned testified to the same effect. Julian Escalante, collector of the custom-house at Guaymas, and Jose Bustamente, judge of the first instance, also certified from their own knowledge to the facts stated by the witnesses summon'd. The foregoing proceedings were referred to District Attorney Jose Montenerde, who declared that they were in accordance with law, and that full faith and credit should be given to the testimony of the persons examined for their social standing and for the positions which they occupy in public stations. To these proceedings is

annexed the power of attorney given by Guadalupe Perez, the widow of Rafael Elias, and her son, Manuel Elias, to Jose Maria Elias,
11 authorizing him in their name to confirm the sale made to the house of Camou Brothers by deed dated July 25th, 1862, of the lands of the ranchos of "San Rafael del Valle," "Agua de Baltazar," "El Gato," "Tomas Romero," and "Mestenos," and also the rancho of "Naidenibacachi," "Agua Prieta," and "Santa Barbara."

3rd. Absolute deed of conveyance executed on the 23d day of March, 1869, by Jose Ma. Elias, for himself and as attorney of Guadalupe Perez de Elias, his mother, and widow of Rafael Elias, the original grantee, and for his brother, Manuel Elias, and by Bernardina L. de Elias, wife of Juan Elias, deceased (Exhibit "C").

From all of which it appears that on the 25th day of July, 1862, the Elias heirs executed a conditional sale or mortgage to the Camou Brothers on certain lands belonging to them, among which was the rancho of "San Rafael del Valle." The conditions of this sale or mortgage were that if the mortgageors should pay within three years the amount of twelve thousand dollars ($12,000) received by them on the property, with interest thereon at the rate of one per cent per month, and all costs, then the sale or mortgage should be cancelled, and failing in this the sale was to become absolute, either party in the meantime having the right to sell the land at an advance upon the sum for which it was mortgaged, and in case it should be sold by either the profits were to be divided equally between the mortgageors and mortgagees.

At the expiration of three years the property remained unsold. On the 17th of March, 1869, the Camou Brothers caused proceedings to be taken before the district court of Guaymas confirmatory of the conditional sale or mortgage made in 1862 by the heirs of Rafael Elias, and on the 23rd of March, 1869, the Camou Brothers obtained a second and absolute deed of the property executed by duly authorized attorney of the heirs of the original grantee and by one of the heirs (Bernardina L. de Elias) in person. This clearly places the title to the property in the Camou Brothers, accepting as true the sworn statement of witnesses taken before the district judge of Guaymas, the opinion of the district attorney, and the certificates of responsible officers of the Government, which can not be called in question.

The testimonio of the original expediente is now before me. It is prima facie genuine, being written on stamped paper of the "bieno" of 1831 and 1832. There is nothing in its general appearance calculated in any degree to cast suspicion on its bona fide. It contains the original grant, which is signed by the treasurer-general, Jose Ma. Mendoze, and bears his official seal. Mr. R. C. Hopkins, especial agent of the Government in relation to the original expediente or matrix of this grant, as found in the government archives of Sonora, reports as follows: "The original expediente or matrix of this grant, containing 40 pages, is found in its proper place in the archives. It is written on the corresponding stamped paper, and the proceedings of survey, valuation, publication, and sale are all regular. No corrador or draft of the title is found in the expediente, but there is attached thereto a certificate that on the
12 25th day of December, 1832, the title was issued. The certificate is signed by Treasurer-General Mendoza. There is also a certificate that Rafael Elias had paid into the treasury the sum of $240.00,

the amount at which the land had been valued and sold. There is nothing in the original title papers calculated to cast suspicion on the same. The title is duly registered in the book of 'Toma de Razon.'"

After a careful examination of the title papers and papers showing deraignment of title from the original grantee, as filed in this case, together with the report of Special Agent R. C. Hopkins thereon, and of the laws, usages, and customs of Spain and Mexico relating thereto, as just cited, I find,

First. That the original title papers filed by the claimants in this case are genuine; that the title was issued in good faith at the time of its date, in accordance with the laws of the State of Sonora and under the sanction and authority of the laws of the Mexican Republic.

2nd. That the tract of land described was granted for grazing purposes, and that the same is located in a region adapted to stock raising.

3rd. That the deraignment of title clearly shows that the rancho of San Rafael del Valle now justly and legally belongs to Jean Pierre Camou, Joseph Camou, Pierre Andre Camou, and Pascual Camou, partners composing the firm of Camou Brothers, by purchase from the heirs of the original grantee, Rafael Elias. I therefore recommend that the title thereto be confirmed to them to the extent of four square leagues and no more, that being the quantity originally petitioned for, appraised, and sold by the State to the said Rafael Elias.

Mines and minerals.

In accordance with Interior Department instructions, I have collected from authentic sources information in reference to the laws of Spain and Mexico respecting minerals and what conditions attach to grants embracing mines. From the earliest European settlement of the country mining for the precious metals constituted the principal branch of industry in Spanish America, and, being the one that yielded the largest revenue to the government, laws and royal ordinances were from time to time passed for the encouragement of the adventurous prospectors and for the protection of the fortunate discoverer of mines of the precious metals; yet, although these laws and ordinances dignified the mining profession by attaching thereto the privileges of nobility, still the government went no further in its liberality than to grant the miner the exclusive privilege of working the mine he might have discovered in the manner required and under the conditions imposed by the laws and ordinances in relation thereto; and when these conditions were disregarded or violated, the ownership of the mines, or, rather, the exclusive right to work it, was lost, and the same reverted to the government to be acquired by any one else who might undertake to comply with the conditions under
13 which it had been granted to the former owner, the absolute ownership of the mine ever remaining in the government.

Joaquin Escriche, in his Dictionario Razonado de Legislacion y Jurisprudencia (a standard authority), under the head of minas, says: "According to ancient Roman law, mines of gold, silver, copper, iron, and other metals pertain to the owner of the land on which they were discovered," "Grant privati juris, et in libero privatorum usa commercio," because they are benefits bestowed by nature to be enjoyed by

the owners of the land producing the same. Subsequently the Roman Emperor appropriated one-tenth of the products of the mines of every character. Under the Spanish law a different rule was adopted; mines of gold, silver, lead, and other metals could not be worked without royal permission, since they (and also salt pits) belong to the King. Any one was permitted to dig in search of minerals or stones on his own lands or on the lands of others, with the consent of the owner, under the condition that the discoverer should receive one-third of the net proceeds of the discovery, the other two-thirds part to be given to the Government.

Every Spaniard or foreigner was permitted to "dig" in search of minerals on public or private lands under the obligation of compensating for the damages occasioned.

In Mexico, Venezuela, and Chili the matter of mines is governed by the ordinances of the 22d of May, 1783. (Escriche, new edition, printed 1869; mina.)

As early as the year 1383 Don Alonzo the XI issued "Pragmatica," in which it is declared that all the mines of silver and gold and lead and of any other metal whatever, of whatsoever kind it may be, in our royal seigniory, shall belong to us; therefore no one shall presume to work them without our special license and command; and also the salt springs, basins, and wells, which are for making salt, shall belong to us, wherefore we command that they revert to us with the produce of the whole thereof, and that no one presume to intermeddle therein except those to whom former kings, our predecessors, or we ourselves may give them as a privilege, or who may have held them from time immemorial. (Vide Book VI, Title XIII, law 2, recapilacion de Castile; Book IX, Title XVIII, Novisima recapilacion.)

The law of Philip II, 1559, declares that inasmuch as the discovers of mines, after having discovered and registered them, pretend, by that act alone, they have acquired such a right to them that no other person can, within the limits and space of such mines, enter or try or work, and that they can thus keep them encumbered without working them themselves or permitting others to do so, by which they prevent the principal, produce, and profit which belongs as well to us as to our subjects and to the public welfare, since that principally consists in the working and reduction of mines and metals, and not merely in their discovery, we declare and command that such discoverer of the mine or mines of silver, after having made registry in the manner prescribed, shall be obliged within six months to sink and excavate to the depth of
14 three estados (a measure of about six feet), and not sinking and excavating his mine to the depth of three estados it may be denounced before the judge and registry made thereof as of a vacant or undiscovered mine.

Also, that we reclaim, resume, and incorporate in ourself, in our Crown and patrimony, all the mines of gold and silver and quicksilver of these kingdoms in whatsoever port and places they may be and are found, whether in royal lands or in those of lordships or of the clergy, and whether in public, municipal, or vacant lands, or in inheritances, places, and soils of individuals, notwithstanding the grants which by us and by the kings, our predecessors, have been made to any person of whatsoever condition, rank, and dignity they may be. (Book VI, Title XIII, Law IV, recapilacion de Castilla; also Book IX, Title XVIII, Law III, Novisima R.)

Royal ordinances for the direction, regulation, and government*ment* of the important body of mining of New Spain and of its royal tribunals general, May 22nd, 1783.

Article first, title fifth, declares that mines are the property of the Royal Crown, as well by their origin and by their reunion declared in law four, title 13th, Book VI, Nueva recapilacion.

Article 1, same title, declares that, without separating them from the royal patrimony, they are granted to the subjects of the King in property and possession in such manner that they may sell, rent, donate, and pass them by will, either in the way of inheritance or legacy, or in any other manner alienate the right which in the mines belong to them on the same terms which they themselves possess it and to persons capable of acquiring the same.

Article 111, same title, declares that this grant is understood to be with the conditions that the grantees contribute to the royal treasury the prescribed portion of the metals, and that they shall work the mines in the manner prescribed by the ordinances, so they shall be considered forfeited whenever a failure shall occur in complying with the ordinances in which it is provided, and that they may be granted to any person who may for that cause denounce them.

Article 1, Title VI, declares that the discoverers of one or more mineral hills, absolutely new, may acquire on the principal vein, which they may select, as many as three pertenencias, continued or interrupted, according to the measurements which shall be prescribed, and if they have discovered more veins they may have one pertenencia on each vien, said pertenencia being determined and marked out within ten days.

(A pertenencia was in extent two hundred varas, measured on the vein, the width being determined by the dip or angle thereof being sufficiently wide to prevent the vein from being cut by a shaft sunk on a side claim at a depth of less than two hundred varas, this being the depth beyond which in those times was considered unprofitable to work a mine.)

Article 10, same title, declares that if the denouncer does not put his working shaft in order nor take possession within sixty days he shall lose his right, and the mine may be denounced by another.

Article 14, same title, declares that anyone may discover and denounce a vein or mine, not only in common land, but also in the private land of any individual, provided he pays for the land of which he occupies the surface and the damage which immediately ensues therefrom, according to the valuation of the experts appointed by both parties and a third in case of a disagreement.

Article 11, Title IX, provides that no one shall be permitted to work mines without the direction and continual assistance of one of the intelligent and practical experts, who in New Spain are called mineros or guardia minas, who must be examined, licensed, and affirmed by one of the professors of mining, which each real or asiento must have.

Article XIII, same title, declares that as mines require to be worked continually and incessantly in order to procure their metals, and as they require in them works and operations which can be executed only in a long time, and as their reestablishment, if their working be suspended

and interrupted, will cost as much as in their original undertaking, therefore to obviate this inconvenience, and also to prevent any owners of mines who can not or will not work them from keeping them without use and for a long time impeding by pretended working the real and effective labor which others might bestow upon them, I order and command that anyone who shall for five consecutive months fail to work a mine with four operatives regularly employed and occupied in some interior or exterior work of real utility and advantage shall thereby forfeit the right which he may have to the mine, and it shall belong to the denouncer who proves its desertion.

Article 10, same title, declares that no mine shall be abandoned without first informing the deputation of the district, in order that it may be published by fixing notices on the doors of the churches and other accustomed places, so that all may have notice thereof.

Article 11, Title XIX, grants in favor of scientific professors of mining the privileges of nobility, in order that all persons who devote themselves to this important profession and occupation may be considered and treated with all the distinction due to so noble a profession.

According to Escriche, the laws of Spain passed prior to 1821 and the laws of Mexico passed since that date have not changed the fundamental principles laid down in the ordinances of the 22d of May, 1783, in relation to the ownership of mines and the manner of acquiring title thereto, hence these audiences have been in force in Mexico since the date of their passage in 1783, the Mexican mining laws passed since the year 1821 not having essentially changed the spirit thereof.

From the foregoing it is manifest that under the laws and royal ordinances of Spain from very early times down to the date of the independence of Mexico, and under the mining laws of Mexico down to
16 the publication of the new edition of Escriche (1869), the miner could acquire no absolute title of fee in any mine discovered by him in any part of the Mexican territory, the usufruct thereof being all that was granted him by the Government, and this under such regulation, instructions, and conditions as were imposed by law, and when these conditions were not complied with the right to work the mine is lost and could be acquired by anyone else who might undertake to comply with the conditions and regulations inseparable from the privilege of working mines.

The Spanish and Mexican Governments in granting lands in Mexico never in terms reserved the minerals contained therein, for the reason that under the constitutional laws they were reserved by and for the Government. For this reason in the many grants of land made by Spanish and Mexican authorities in Sonora, as well as in California, no mention is made of minerals. Pastoral and mining pursuits were separate branches of industry, and in a certain sense independent of each other. Both were cherished and protected by the Government. To the grazier and agriculturist was granted so much of the soil as he had means to occupy and improve, together with such appurtenances thereto as was necessary to make the occupation of the soil possible and the use thereof valuable, and to the miner were granted the minerals he might discover in the soil and the usufruct of the mine in which they were found; but to neither of these parties was the grant unconditional.

To the grazier were granted lands on condition that he occupy them usefully to himself and to the Government, and the abandonment thereof was followed by a forfeiture of title, in which case the land reverted to the Government, to be regranted to a more industrious applicant.

To the miner was granted the exclusive right to work the mine he might have discovered, on condition that he observe certain rules and regulations established by law and pay to the Government a certain portion of the products of the mine. A violation of these conditions was also followed by a forfeiture of such title as he possessed, the usufruct of the mine reverting to the Government, to be regranted to a more vigilant and honest miner.

The objects of the Government in granting lands for settlement were the increase of the wealth and population of the country, the spread of the holy Catholic faith, and the extension of the powers of the Spanish monarchy, and the motive that induced the granting of privileges to miners was that the royal treasury might be supplied with American gold. No grants of lands or mines were ever made by the Governments of Spain or Mexico for speculative purposes. It is true that lands were sometimes granted as a reward for distinguished services, but in all other cases on condition of occupation. From a careful consideration of the foregoing laws and ordinances, as well as of the usages and customs of Spain and Mexico, I am forced to the conclusion:

First. That the grantee of land under the Spanish and Mexican Governments acquired no title to the minerals contained in the granted lands.

17 Second. That the title to the minerals contained in the tract granted remained in the Government, notwithstanding the grant of lands.

Third. That under the Spanish and Mexican laws and ordinances anyone had a right to dig in search of minerals under certain conditions on his own lands or on those belonging to individuals or private persons.

Fourth. That the Government of the United States, under the treaty of 1853 for the purchase of a portion of the territory of Sonora, succeeded to all the rights and obligations of the Mexican Governments in relations to the ceded territory at the date of the treaty. The result of these conclusions necessarily is that since our Government succeeded to all the rights and obligations of the Mexican Government in relation to the ceded territory it is bound by the treaty to recognize and confirm all rights, titles, and privileges which had been granted by that Government to private individuals prior to the cession of the territory and to carry out the intentions of the Mexican Government towards those having ownership in lands and mines precisely as if there had been no change of sovereignty. It is therefore clear to my mind that anyone has at present a right to prospect for minerals on such portions of the ceded territory as may have been granted by the Mexican Government to private individuals and a right to work any mines that may be found on said lands under no more onerous conditions that the reasonable ones imposed by the mining laws of Mexico.

See Article XIV, title 11, Ordinances, May 22nd, 1783, heretofore cited.

Grants of land by Spain and Mexico in the ultramarine possessions of the Spanish Crown.

The ancient laws of Spain declare that the ownership and full dominion of conquered kingdoms belong to the monarch. (Law 11, Title I, partida 11.)

Wherefore, the West Indies having been conquered by the arms of the Catholic King and Queen, Fernando and Isabel, in the XVI century, in consideration of the facts that no person can live without the means of subsistence and no city exist without the rents necessary for its support, their majesties thought proper to cede to the towns (publaciones) of America and to the councils of the same certain portions of lands from which to derive their support, using the same for pasturage and cultivation or in the manner that may be directed by the municipal ordinances. These lands were denominated consejiles or de propios.

Another portion of the (conquered) lands *were* distributed by concession of the King to those who assisted in conquering the country as rewards for their services, and lands were also sold to individuals (particulares) for the purpose of obtaining means to supply the necessities of the Crown. These lands donated or sold were denominated de domina particular (of private property), as in fact they are, because the full ownership thereof was transferred to the donees or purchasers, and hence they are truly private property.

18 The usufruct of the remaining lands *were* ceded by the Kings to all their vassals, that they might make use of their pastures, woods, waters, and other natural productions for the support of their flocks and herds, which lands are called "common lands" because they are for common use. They are also called valdios (vacant lands), because nothing is paid for the use of pasturage or firewood that may be cut thereon. They are also realengos (royal lands), because the dominion and property thereof are reserved to the King by the right of conquest, although he ceded the usufruct of the same to his vassals.

(Law 111, Title VIII, Book VII del Ordenaniento.)
(Law X, Title XV, Book 11, recapilacion.)
(Law 11, Title I, Book III del Ordenaniento.)
(Law I, Title V, Book VII, recapilacion.)

For the disposition and settlement of the realengo lands of Spanish America royal decrees were from time to time issued and laws and ordinances passed, changed, or modified to suit the circumstances of the times, having for their end a proper disposition of the realengo lands and the encouragement of the occupation of the country by the actual settler. The royal decree of the 24th of the month of November, 1735, required petitioners for realengo lands to apply to the royal person of the King for a confirmation of their titles. This decree, however, was found to be prejudicial to the settlement of the realengo lands, the expenses attending such applications being so great as to prevent many persons from applying for these lands; wherefore to remedy this difficulty were issued the royal instructions of the 15th of October, 1754.

Article 1st of these instructions provides that from the date thereof the power to appoint subdelegate judges to sell and compromise for vacant lands of the royal domain shall belong exclusively to the viceroys and

presidents of the royal audencias of the Kingdom, who are required to notify the subdelegate judges of their appointments and furnish them with a copy of the instructions, the viceroys and presidents being required to give immediate notice to the secretary of state and universal dispatch of the Indies of the ministers whom they might appoint as subdelegate judges of their respective districts.

Article 30 provides that all persons who shall have possessed royal lands, whether settled or cultivated or not, from the year 1700 till the year of the publication of this order may prove before the subdelegate the titles and patents in virtue of which they hold their lands.

Article 4th provides that persons in possession of royal lands by virtue of sales or compositions made by subdelegates before the year 1700, although the same may not be confirmed by the royal person of the King, shall not be disturbed in the possession thereof.

Article 5th provides that the possessors of lands sold or compromised for from the year 1700 till the present time shall not be disturbed in the possession thereof, provided their titles have been confirmed by
19 the royal person of the King or by the viceroys and presidents of the audencias during the time they exercised this faculty; but such possessors of lands as have not obtained such confirmations shall apply to the audencias of the district to have their titles confirmed.

Under this decree or instructions, the preliminary proceedings of survey, valuation, publication, and sale of realengo land petitioned for having been taken by the minister subdelegado of the district in which the land was situated, the expediente showing such proceedings was transmitted to the royal audencia for approval; and, if the proceedings were found to be regular, they were approved and the title was issued and registered in a book kept for that purpose.

The provinces of Sinaloa and Sonora belonged to the real audencia of Guadalajara, and hence the sales made of realengo lands in these provinces under the decree of 1754 were registered in the office of the real audencia of Guadalajara.

The law of 1754 remained in force until the 4th of December, 1786, when, to cure some defects and remedy some inconveniences found in the practical workings of said law, the royal ordinances of intendentes were issued. Under these royal ordinances the kingdom of New Spain was divided in twelve intendencias, exclusive of California, one of which was the general intendencia of the army and province, and to be established in the capital of Mexico, and one the intendencia of Sonora and Sinaloa, the capital of which was established in the city of Arizpe.

The viceroy was to exercise the superior authority and the various powers conferred on him by royal commission and by the laws of the Indies as governor and captain-general, but the superintendency of the royal treasury in all its branches and revenues was committed to the care, direction, and management of the general intendency of the army and treasury, established in the capital of Mexico. A superior junta was established in the capital, having jurisdiction over all matters relating to the royal treasury and the army, and also over the public property and revenue.

Article 81 of these ordinances provides that the intendentes shall be the exclusive judges of all causes and questions that may arise in the

district of their provinces in relation to the sale, composition, and grant of realengo lands.

Under these ordinances the proceedings preliminary to a grant of realengo lands were taken in the same manner as under the law of the 15th of October, 1754, but these proceedings, instead of being referred to the real audencia for approval, were submitted to the intendente, who referred the same for examination to the promotor fiscal, who made a report thereon; whereupon they were referred by the intendente to the "provincial junta de hacienda," and when approved were transmitted through the office of the commandante general to the city of Mexico for final approval by the "superior junta de hacienda," and if found to be correct the proceedings were approved, the approval registered in the proper book, and the expediente returned to the province where it belonged.

On the 22d day of October, 1791, Don Pedro de Nava, com-
20 mandante general of the western provinces, made a decree to the effect that, "notwithstanding what was provided in article 81 of the ordinances of the intendentes, captains of presidios were authorized to grant house lots and lands to soldiers and settlers who might desire to establish themselves under the protection of the presidio. These grants were, however, limited to the territory embraced within four leagues measured one league from the presidio to each of the cardinal points. The motives of this decree are manifest; they were that the soldiers of the presidio might make homes for their families and that pueblos might grow up around the presidial establishments.

The ordinances of the 4th of December, 1786, were further modified by the royal decree of the 23rd of March, 1798.

This decree provides that when the value of the realengo lands petitioned for and sold by the intendentes does not reach the sum of two hundred dollars it shall not be necessary to refer the proceedings to the superior junta for approval. The reason for the issuance of this decree was that the expenses attending a reference to the superior tribunal were often greater than the value of the lands sold, which prevented persons of small means from making application for realengo lands and much retarded the settlement of the country.

Under these ordinances with the modifications referred to grants of realengo or royal lands continued to be made until the dominion of Mexico was lost to the crown of Spain by the revolution which resulted in the independence of Mexico in 1821.

From the foregoing laws, ordinances, and decrees it is seen that the constant policy of Spain was to encourage by all means the settlement of her possessions in the new world; that, while the absolute ownership of the realengo lands was retained by the Crown, laws from time to time were passed for the purpose of enabling actual settlers to obtain titles to so much of these realengo lands as they required for their use and occupation in the pursuits of agriculture and stock raising. Yet, while the terms under which titles to these realengo lands could be obtained for actual use and occupation were made so easy as to be within the reach of petitioners of humble means, still the Government guarded with jealous care their disposition by passing such laws as made it impossible for the vassals of the King to acquire them for any other purpose than that of actual use and occupation.

Grants of "terrenos valdios," or vacant lands, by the Government of Mexico subsequent to the year 1821.

The revolution of 1821 changed the form of government of Mexico without producing any radical change in the habits or thoughts of the people. In 1822 an imperial government was established, which, however, was soon abolished and the republican form adopted, and in 1824 a federal constitution was formed, modeled somewhat after that of the United States. On the 4th of August, 1824, the sovereign constituent congress of the United States of
21 Mexico passed a decree, No. 70, in which are specified the sources of the federal revenues, and the 11th article of this decree recites "that the rents that are not included in the preceding article of this decree belonged to the States." As a compensation for this concession by the General Government, the sum of three million one hundred and thirty-six thousand eight hundred and seventy-five dollars was required to be paid yearly by the States for the support of the General Government. This sum was apportioned to the different States according to their population and wealth, the sum apportioned to the State of the West (Estado de Occidente), embracing the Spanish provinces of Sonora and Sinaloa, being $53,125.00. Under this law, grants or sales of land were made in the State of Sonora from 1824 down to the time when the system was changed by legislative enactment.

After the independence of Mexico, the old intendencia of the Spanish Government, embracing the provinces of Sonora and Sinaloa, was called El Estado del Occidente (the State of the West), continuing united under that name until about the year 1830, when they were divided by the boundary as it now exists.

On the 20th of May, 1825, the constituent congress of the free, independent, and sovereign State of the West (El Estado del Occidente) passed provisional law No. 30, regulating the system of selling the public lands. Under these provisional regulations, the prices under which public lands could be sold were graduated according to the location and quality of the land. The quantity allowed to one individual was limited to four square leagues, unless the applicant could satisfy the Government that he required more for the use of his stock.

Under this provision of the law, the State of the West, in making grants or sales of land, continued the system that had been established by the Spanish Government. The same formalities were observed, the lands were surveyed, valued, published for thirty days, and at the end of that time were sold at public auction to the highest bidder, the treasurer-general of the State occupying the same position under the State government that the intendente did under the Spanish Government. The grants, however, issued by the treasurer-general required no approval by the supreme Government. Between the times when grants ceased to be made within the jurisdiction of the intendencia of Sonora and Sinaloa by the authorities of the Spanish Government and the time when they were made by the authorities of the "Estado del Occidente," under the law of the general congress of 1824 and the provisional law of the congress of the State of 1825, the granting power was exercised by an officer entitled comisario general provisional de hacienda credito publico y guerra, whose

headquarters were generally at Fuerte, a town in Sinaloa, near the northern boundary of the State, as shown by the records of the times.

Report of Special Agent Mr. R. C. Hopkins states "that notes or expedientes of grants of land in the Government archives of Sonora show that about the year 1825 a number of grants were issued by the
22 above-named officer on proceedings which, under the Spanish Government, had not gone beyone the approval of the provincial junta de hacienda, having, doubtless, at that point been arrested by the revolution of 1821."

In these cases no borradores or draughts of title are found in the expedientes, but notes are found of the register of the grant in cuaderno No. 2 in the office of the comisario general.

On the 30th of May, 1834, the constituent congress of the State of Sonora issued decree No. 10, which provided as follows:

Article 1st. Six months' further time is granted to possessors of land who have failed to obtain titles of ownership thereof as required by decree No. 11 of the 28th of June, 1833.

Article 2nd declares that if at the end of this time, which shall not be extended, the possessors of land shall not appear and make their grants effective their lands shall be denounceable and the claimants thereof shall be subject to the penalties imposed by the organic laws of the treasury which is about to be passed. This law was required to be circulated and published in all the pueblos of the State, the respective authorities being directed to furnish exact lists of the lands in their district for which titles have not been obtained.

On the 11th of July, 1834, was passed the "ley organica de hacienda" (organic law of the treasury).

Article 57 of this law provides that any one having necessity for a tract of land for grazing or other purposes shall present himself before the treasurer-general, applying therefor in the name of the State, accompanying his application with a testimony of three impartial witnesses in relation to the circumstances of the petitioners, character of the land, etc.

Article 58 declares that to no new settler (celador) more than four square leagues shall be granted or sold unless it can be shown that on account of the abundance of stock owned by such new settler he needs more, in which case the treasurer-general will concede him only so much as he may need, as shown by the testimony of impartial witnesses.

Article 60th declares that the treasurer-general, as the immediate chief of all the revenues, shall make sale of the lands and issue titles therefor.

Article 61st declares that those who possess lands to which they have not obtained title, although the lands have been applied for and surveyed, shall present themselves to the treasurer-general within the time designated by the law No. 10, of the thirtieth day of May of the current year (six months from the first of June, 1834).

The lands of the proprietors which may not be regulated in accordance with this disposition shall remain vacant and be denounceable, provided the proprietors thereof shall not present themselves and make application for their titles within the time prescribed by said law, setting out in writing the cause of the failure to obtain title.

Article 62nd directs the treasurer-general to refer these matters
23 to the promotor fiscal for his opinion, whereupon the matter will be determined in view of the rights of the interested party and of the public treasury.

Article 63rd requires grantees of lands to construct boundary monuments of rough stone and lime within three months after issuing of the title, and failing to do so they have to pay a fine of twenty-five dollars and the cost of constructing the necessary monuments.

Article 64 fixes the value of the public lands as follows:

For dry lands only suitable for grazing, fifteen dollars per square league.

For such as may be irrigated from reservoirs and contain pasture, forty dollars, and without these circumstances, thirty-five dollars per square league.

For such as may contain springs or rivers, but are dry and broken, sixty dollars per square league, and eighty dollars per square league for such as are very fertile and suitable for agriculture.

These were the minimum prices for less than which lands could not be sold in any case whatever.

Article 72 directs the surveyors to appoint as appraisers of the lands petitioned for persons who are free from prejudice and not especially partial to the petitioner.

Grants made subsequent to the passage of the foregoing law referred to the decree of the general congress of the 4th of August, 1824, and to the decrees of the congress of the State of Sonora on the 30th of May, 1825, and of the 11th of July, 1834, as the basis on which they were made, and all the grants of land in Sonora since the passage of these laws were made under the authority thereof.

Grants under the laws of colonization.

To encourage the settlement of the vacant lands of the Republic, the sovereign general constituent congress of the United States of Mexico of in (?) 18th of August, 1824, passed a law, article 1st of which declares that the Mexican nation offers to foreigners who may come to establish themselves in the territory security in their persons and property, provided they submit to the laws of the country.

Under this law any lands of the nation that did not belong to private individuals or pertain to corporations or pueblos were subject to colonization, except such as were embraced within the twenty leagues bordering on a foreign territory or the ten leagues bordering on the seashore. In the granting of these lands Mexican citizens were to be preferred to foreigners. To carry into effect this general law the congresses of the States were to form such laws and regulations as might be necessary, in accordance with the general constitution and principles established by this law.

The maximum quantity that could be granted to one person under this law was eleven square leagues—one of irrigable, four of arable, and six of pasture lands.

24 The concluding article declares that in accordance with the principles established by this law the Government will proceed to colonize the Territories of the Republic.

Under this law grants were made in the Territory and Department of Californias, down to the change of government on the 7th of July, 1846.

On the 4th of April, 1837, a decree was issued "to render effective the colonization of the lands of the Republic."

This decree declares the government, in concert with the council, shall proceed to render effective the colonization of the lands which may be or should be the property of the government by means of sales, leases, or mortgages, applying the proceeds thereof (which, in case of sale, shall be at a price not less than $1.25 per acre) to the extinguishment of the national debt which has already been or may be contracted, always reserving a sufficient quantity to fulfill the promises made to the soldiers as a reward for their services in the war of independence, and also sufficient to satisfy the concessions made by Congress as Indian reservations, and to those who had assisted in the reestablishment of the government in Texas.

On the 15th of September, 1837, an agreement was entered into in the city of London between the agents of the Mexican Government and the holders of Mexican bonds to the following effect:

Article 1st provides for the consolidation of the national debt at 5 per cent interest per annum. F. de Lizardy and Co. were appointed as agents of the Republic to act in the matter, these gentlemen to issue in the name of the Mexican Government the corresponding bonds of the consolidated fund in sterling money payable in London on the 1st of October, 1866. A certain class of these bonds were receivable in payment for vacant lands in the Departments of Texas, Chihuahua, New Mexico, Sonora, and California, as might be desired by the purchaser, at the rate of one pound sterling for four acres, interest to run on the bonds until the purchasers of the lands should be placed in possession thereof.

Article 7th declares or provides that the payment of these bonds should be secured by a mortgage in the name of the Mexican nation on one hundred million of acres of the vacant lands of the departments of the Californias, Chihuahua, New Mexico, Sonora, and Texas.

On the 1st of June, 1839, the foregoing agreement was approved by decree of President Santa Ana.

Attempt of President Santa Ana to annul grants made in the territory of the Republic after 21st of September, 1821.

On the 25th of November, 1853, President Santa Ana issued a dictatorial decree declaring "that the vacant lands (torrenos valdios), being the exclusive property of the nation, could never have been alienated by any title whatever by virtue of decrees, orders, and dispositions of the legislatures, governments, or authorities of the States or Territories of the Republic. Wherefore such sales, cessions, and alienations as may have been made of the vacant lands without the express order and sanction of the general powers in the form prescribed by law are declared null and void."

On the 7th of July, 1854, President Santa Ana issued a second decree in relation to public lands, requiring all titles of the alienation of public lands made in the territory of the Republic from September, 1821, to the date of the decree given either by the general authorities or the extinguished States and departments shall be submitted to the revision of the

supreme Government, without which they shall be considered of no value, nor shall they convey any right of property.

The foregoing decrees of President Santa Ana were annulled as follows:

On the third day of December, 1855, Juan Alvarez, President ad interim of the Mexican Republic, issued a decree abrogating in all their parts the decrees of the 25th of November, 1853, and of the 7th of July, 1854, issued by President Santa Ana, and declaring that all the titles issued during the period referred to in said decrees of 1853 and 1854 by the superior authorities of the States or territories under the federal system, by virtue of their legal faculties or by the authorities of the departments or territories under the central system, without the express authorization or consent of the supreme Government for the acquisition of said lands, the same being in accordance with existing laws in relation to such alienations, shall in all time be considered as firm and valid, the same as the titles to any other property legally acquired, without in any case being subject to a new revision or ratification by the Government." This decree further declares "that the alienations of vacant lands that may have been made by the authorities of the States, departments, or territories without the requisites mentioned in the foregoing article and in contravention of the requirements of article 4 of the law of Congress of the 18th of August, 1824, are null and void, and the possessors of lands in such cases shall be subject to such penalties as may be imposed by the laws of the Republic."

Article 4 of the law of the 18th of August, 1824, above referred to, is as follows:

"The territories embraced within the twenty leagues bordering on a foreign nation and the ten leagues bordering on the sea cannot be colonized without the previous approval of the supreme Government." Decree of President Alvarez further declares "that the concessions or sales of vacant lands which may have been made by competent authority and in accordance with the laws in force controlling the same, under the express obligation of colonizing them within a fixed time, on a failure to comply with this condition the land in such case reverting to the nation." The decrees of President Santa Ana of 1853 and 1854 *was* also abrogated by the act of the Mexican Congress of the 16th of November, 1856; but even if the dictatorial decree of President Santa Ana had not been declared null they could not effect the Mexican grants in Arizona. Since
26 the treaty was signed on the 25th of September, 1853, while the decree of Santa Ana was not issued until the 25th of November, 1853, and that although ratifications of the treaty were not exchanged until after the 25th of November, 1853, these ratifications have a retroactive effect relating to the date of the treaty (September 25th, 1853) and bound both governments from that date.

From the foregoing historic sketch of the laws, ordinances, and decrees of the governments of Spain and Mexico in relation to the disposition of public lands is gathered—

1st. That under the ancient laws of Spain the full dominion of a conquered kingdom was claimed by the monarch by right of conquest.

2nd. That the lands of the conquered kingdoms were divided into three classes: First, such as were conceded for the establishment and support of pueblos, which were denominated consejiles or de propios;

2nd, such as were granted by the King to those who had assisted in conquering the country, and such as were sold to individuals for the purpose of obtaining means to supply the necessities of the Crown, which lands were denominated de dominio particular, and, 3rd, such as remained of the conquered kingdom, which were called "common lands," "vacant lands," and "royal lands."

3rd. That the usufruct of this last-mentioned class of lands was ceded by the kings to their vassals under the provisions of such laws as from time to time were passed in relation thereto.

4th. That these royal lands were granted for use and occupation, and that the quantity granted was limited to such an amount as the applicant might need and was able to use and occupy.

5th. That up to the 15th of October, 1754, grants or concessions of royal lands required the approval of the King.

6th. That from the 15th of October, 1754, to the 4th of December, 1786, grants of land were issued by the real audencias and did not require the approval of the King.

7th. That from said 4th of December, 1786, to the date of the Mexican independence grants of the royal lands were made by the intendentes or governors of provinces and required the approval of the "superior junta de hacienda," established in the capital of Mexico.

8th. That the exceptions to this rule are as follows, to wit:

On the 22d day of October, 1791, Don Pedro de Nava issued an order permitting captains of presidios to make grants within the four jurisdictional leagues of the presidio, and in 1798 grants of the royal lands of a value of less than $200 did not require the approval of the "superior junta de hacienda."

9th. That on the change of governments in 1821 the realengo or royal lands of the Spanish Government became the public lands of the Republic of Mexico and continued to be disposed of to settlers by valuation and sale, much in the same manner as they had been under the Spanish Government.

10th. That the act of the Mexican Congress of the 4th of August, 1824, gave to the State of the West (Estado del Occidente),
27 composed of the States of Sonora and Sinaloa, the public lands embraced therein, requiring from the State for this concession the annual payment into the Federal treasury of the sum of $53,125.00, and that, based upon this act of the General Congress, the congress of the States of Sonora and Sinaloa united, on the 20th of May, 1825, passed a provisional law providing for the disposition of the public land, which provisional law was followed by the organic law of hacienda, passed by the congress of the State on the 11th of July, 1834, confirming the provisional law of 1825, with some amendments thereto.

11th. That on the 18th of August, 1824, the General Congress of Mexico authorized the colonization of such lands of the nation as did not belong to individuals or corporations, directing the legislatures of the States to make such laws or regulations as might be necessary for the carrying into effect the provisions of this general law within their respective jurisdictions.

12th. That the provisional regulations made by the congress of Sonora on the 20th of May, 1825, for the disposition and settlement of the pub-

lic lands may be considered as authorized to be made by the act of Congress of Mexico on the 18th of August, 1824.

13th. That on the 25th of November, 1853, and the 7th of July, 1854, Gen. Santa Ana, by dictatorial decrees, attempted to annul the grants of land made subsequent to the 15th of September, 1821, which decrees were abrogated by decree of President Alvarez on the 3rd of December, 1855, and by act of the Mexican Congress passed November 16th, 1856.

14th. That grants of the realengo or royal lands were made by the Spanish Government for settlement, use, and occupation, and that grants under the Mexican laws of colonization and under the provisional regulations made by the congress of Sonora and Sinaloa of the 20th of May, 1825, and the organic law of hacienda of the 11th of July, 1834, were made under the condition of occupation within a limited time under penalty of forfeiture of the right granted unless a good cause could be shown why the condition of occupation had not been complied with.

Wherefore, since grants of the public lands were given on condition that they continue to be occupied, and if abandoned they were subject to denouncement and could be regranted by the Government, it is manifest that these grants of the public domain by the Government were conditional and did not pass the absolute title or fee of the land.

Regarding the testimony in this case touching the early occupation of said rancho, in accordance with the requirements of the laws, usages, and customs of the country making the grant, I hold it to be ample. Such occupation is historically notorious, and the cause of the abandonment of equal historical notoriety.

As to the testimony relating to the mineral and nonmineral character of the land, it appears to be quite conflicting. The witnesses knew nothing of the boundaries of the said rancho, and until a new survey
28 shall have been made upon the ground it will be impossible for anyone to exactly testify to the characteristics of all the said grant or tract.

The questions were so framed as to call out answers that would surely apply to the land of the grant, and I am confident they do.

The claimants have furnished what they call an accurate map of the grant, executed, no doubt, from the notes of the original survey as shown in the expediente, and reasonably enough (to my mind) object to making a survey on the ground at this time, inasmuch as they will be required to pay for one and perhaps two more official surveys before receiving patent in the event of confirmation.

The testimony of Fred. G. Hughes, which so flatly contradicts that of Silas Hawes and Nicholas Stanton in some particulars, is but slightly contradictory so far as the land of the said rancho is concerned, the mines at and near Charleston not being on the San Rafael del Valle grant.

Have travelled over said grant and am satisfied that there are no mines upon it which are now being worked or at all developed, but that, as the witness Hughes says, some of it bears mineral, whether of much value or not remains to be proven by future development.

JOHN WASSON,
U. S. Surveyor-General.

TUCSON, ARIZONA, *October 21th 1879.*

[SEAL.] OFFICE OF SURVEYOR-GENERAL,
Tucson, Arizona, March 23d, 1892.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

ROYAL A. JOHNSON,
U. S. Surveyor-General, District of Arizona.

(Endorsed:) Filed February 21, 1893. James H. Reeder, clerk, by R. L. Long, deputy clerk.

And be it further remembered that thereafter, to wit, on the 28th day of March, A. D. 1894, being the 11th day of the December term, 1893, of this court, held at Tucson, in the Territory of Arizona, the following proceedings were had:

JUAN PEDRO CAMOU, PLAINTIFF, *vs.* THE UNITED STATES, DEF'T. } No. 3.

This cause came on for trial, William Herring and Rochester Ford, esqrs., appearing for Juan Pedro Camou, and Geo. Hill Howard appearing in propria persona and as attorney for plaintiff; Matt. G. Reynolds, U. S. attorney, and Wm. H. Barnes, esq., of counsel, appearing for the defendant.

The plaintiff called R. C. Hopkins, Bonillas, D. Snyder, and M. Marks, who were sworn and examined.

The defendant called C. Layton, P. C. Merrill, and H. O. Flipper as witnesses, who were sworn and examined.

29 The court adjourned until the following day, to wit, the 29th day of March, 1894, at 9.30 o'clock a. m.

When on said last date the trial of this cause was resumed, Thos. A. Barton was called on behalf of the defendant, sworn, and examined.

Upon the trial of this cause, on the 28th and 29th days of March, 1894, the following testimony, oral and documentary, was offered and introduced:

In the United States Court of Private Land Claims, sitting at Tucson, Arizona.

JUAN PEDRO CAMOU *vs.* THE UNITED STATES. } No. 3. "San Rafael del Valle" Private Land Claim.

Transcript of shorthand notes of testimony, etc., taken upon the trial of the above-entitled cause at the court room of said court, in the city of Tucson, Arizona, on Wednesday, March 28th, 1894, before the full court and in the presence of Matt. G. Reynolds, esq., attorney for the United States, Wm. H. Barnes, esq., assisting; and of William Herring, esq., Rochester Ford, esq., and George Hill Howard, esq., attorneys for petitioner, said Howard also appearing in his own behalf.

Mr. Ford stated the claims of petitioner.

R. C. HOPKINS, a witness called and sworn on behalf of the aforesaid petitioners, testified as follows:

Direct examination by Mr. HERRING:

Q. What is your full name, Mr. Hopkins?

A. Rufus C. Hopkins.

Q. Where do you at present reside?

A. San Francisco.

Q. State whether under the act of July 5, 1870, the surveyor-general, with the approval of the Department of the Interior, delegated and appointed you to proceed to the capital of the Mexican State of Sonora and examine the archives found there, and there make transcripts and minutes of all title papers and proceedings therein relating to grants of lands within the Territory of Arizona, and report their condition as to proper form, validity, etc.

A. I was not appointed by the surveyor-general, but directly by the Department of the Interior.

Q. Under the act that I have referred to?

A. Yes, sir; under the provisions of that act.

Q. And to perform the duties I have stated?

A. Yes, sir.

30 Q. Did you execute the duty entrusted to you?

A. I did.

Q. Were you at that time familiar with the Spanish language?

A. I was; yes, sir.

Q. In executing that duty did you proceed to the Mexican capital of Sonora—Hermosillo?

A. I went first to the city of Ures, which was then the capital; but meantime it was removed to Hermosillo, and then I went to Hermosillo.

Q. Among the records and papers that you investigated at Hermosillo did you find any papers relating to the title of the grant known as the San Rafael del Valle?

A. I did.

Q. Was that grant at that time a grant within the limits of the Territory of Arizona?

A. It was; yes, sir.

Q. You made certain notes of your examination at that time?

A. I did; yes, sir.

Q. Can you recall now, without reference to those notes, the nature of your examination?

A. I have examined the notes within the last few days in the surveyor-general's office, but I can recall generally without them.

Q. Can you recall more fully with them?

A. Yes, sir.

Q. Take the papers now shown to you, which purport to be copies of those notes from the surveyor-general's office in Arizona, and state what examination you made of the San Rafael del Valle grant papers and archives in the office of the secretary of the State of Sonora or the office of treasurer-general of Sonora, at Hermosillo.

A. In my examination of the archives, among other grants that I found, I found that of the San Rafael del Valle, of which I made an examination of this character; of the title, etc.

Q. What papers did you find there?

A. I found the original expediente. Shall I read from this report?

Q. You may state generally in the best way you can.

A. I found the original expediente or matrix of the grant.

Q. Do you now remember whether or not that matrix was on stamped paper?

A. Yes, sir; it was on stamped paper, as I remember.

Q. Did you find any entry in the Toma de Razon?

A. Yes, sir; found an entry in the Toma de Razon, of which I made a copy on my notes. I also copied the field notes of the description of the survey of the grant.

Q. Were those copies incorporated by you in your report at that time?

A. They were; yes, sir.

Q. State now what those field notes were.

A. The notes of the survey taken by the surveyor; the measurement of the lands—the courses and distances measured.

31 Q. I understand you to say there was a separate paper constituting the field notes?

A. Oh, no, sir; they were bound up in the proceedings I have described.

Q. And were part of the proceedings?

A. Yes, sir. Of the expediente?

Q. Yes.

A. Yes; containing forty pages of writing.

Q. And the signatures to those papers which you found there, did you compare those signatures yourself with other signatures of the same person?

A. I did; yes, sir.

Q. What have you to say in relation to their appearance of genuineness?

A. My recollection is I found them genuine. I have not seen them since, or at least for many years. I haven't seen the original testimonio for ten or twelve years. I so reported at the time—that they were genuine.

Q. Did you, at the same time, have in your hands or under your consideration the titulo which is now handed to you [handing witness a document]?

A. When I made the examination?

Q. Yes, sir.

A. No, sir; I did not have that at that time.

Q. Did you at any time during the progress of your investigation of this title?

A. I subsequently had it; yes, sir. The endorsement is in my handwriting—"No. 3, original title papers of San Rafael del Valle." I was employed in the surveyor-general's office after my examination as special agent, and I then saw that for the first time; it was on file in that office.

Q. Had you, at the time you made the examination in Sonora, familiarized yourself with the method which appeared to have been in operation in relation to granting lands by the State of Sonora at or about the period when this grant claims to have been made?

A. I had, generally; yes, sir, I will state, in 1872. Before that I had been to Sonora as an agent of the Government in 1872, but at that time I was appointed by the Government, but I was employed by the Texas Pacific Railroad in 1872.

Q. Is that in relation to any investigation of titles or archives?

A. Yes, sir; the same character of work.

Q. To what extent did the San Rafael del Valle land grant which you had under investigation at this time appear to conform in general manner of granting and making to the system that you found to have been in operation at the time when this grant is claimed to have been made?

A. I think it conformed to it in every respect; that is my recollection. In fact, all the grants that I found were similar in form.

Q. At the time you were making these investigations as to this particular grant in Arizona did there come under your observation
32 and investigation other grants within the limits of the State of Sonora?

A. Yes, sir.

Q. Made by the State of Sonora?

A. I took a list of all the grants I found in the archives, going as far back as 1661, and I embodied this in my report to the Government. Of course I didn't examine carefully, only so far as to see that they were in the present limits of Arizona.

Q. So far as you examined grants made in 1824 and subsequent thereto, which grants were in the limits of the State of Sonora, did you or not find the grant of San Rafael del Valle conform in the method of making the same to the manner which was in operation at the time of its date?

A. I did.

Q. With other grants?

A. Yes, sir; that is my recollection.

Q. Did you find any "borrador" with this grant?

A. No, sir; I find from notes in the office of the surveyor-general that I found no borrador.

Q. From your examination which you have made of the records in the archives at Hermosillo in relation to land grants will you state whether you became to any extent, and, if so, to what extent, familiar with the signature of José Maria Mendoza?

A. In my examination I became very familiar with that signature, sir.

Q. [Exhibiting document.] Look at the instrument now shown to you—the "titulo" in this case (interrupted)——

A. I will remark further: About thirty years ago, I think, there were perhaps four or five grants belonging to Mr. Camou that were for sale in San Francisco, of which grants I made translations. I think this was one of them. That was as far back as thirty years ago, I think.

Q. Look at the signature now upon this "titulo" shown you and state whether that is or not the genuine signature of José Maria Mendoza.

A. I think it is his genuine signature; yes, sir.

By Mr. HERRING. I would like to have it marked as Claimant's Exhibit No. 1, and offered in evidence.

By the WITNESS. I see the signatures of the assisting witnesses are gone—worn off.

Q. To what may that be ascribed, from your examination of that paper?

A. I think because of wet—exposed to dampness. The paper is decayed.

(The document was thereupon marked as requested.)

33 Cross-examination by Mr. REYNOLDS:

Q. When you made your examination in the archives did you notice anything peculiar in this expediente?

A. Not that I recollect.

Q. Did you examine it to see the peculiarity of the signatures?

A. Oh, yes; I examined the signatures carefully.

Q. Did you examine to see if the signatures corresponded with the names in the body of the instrument?

A. I think I did, but I can't recollect.

Q. Did you examine the petition for the grant?

A. I think I did.

Q. Did you see the name of Rafael Elias?

A. I think I did.

Q. Did you see any erasures in that instrument?

A. Not that I remember of. I haven't any recollection as to any erasures. I haven't any positive recollection as to the examination of signatures except that one of Mendoza.

Q. I am not asking as to that now, but as to the erasures in the instrument.

A. I haven't any recollection now of erasures.

Q. Did you see the name "Ignacio" erased and the word "Rafael" written over it on the first line of the petition for the grant?

A. I do not remember. It may have been so, but I do not now recollect.

Q. Did you see the letter "Y" and the letters "Eu" in Eulalia erased in the original petition?

A. I do not recollect.

Q. You do not recollect whether or not in the original such erasures existed?

A. I do not.

Q. You do not embody anything of that kind in your report?

A. No.

Q. Do you know whether you noticed over the name "Ignacio," signed at the bottom of the petition, was written the word "Rafael?"

A. I do not recollect.

Q. You do not recollect that?

A. No.

Q. Do you know whether at the bottom of the petition, in signing it, the name "Eulalia Elias"—erased?

A. No, sir; I don't remember. It is 15 years since I made the examination and of course I have no individual recollection of anything of that kind.

Q. When you found the expediente in the archives it was incomplete as a matrix, wasn't it?

A. Perhaps it was; I do not remember now.

Q. It didn't have a "borrador?"

34 A. It had no "borrador;" no, sir.

Q. It would not have been a complete matrix without a borrador?

A. Of course; a great many haven't the borrador. Of course, it lacked that, but I can't say what else.

Q. If that had been there it would have been a complete matrix?

A. I think so; that is my recollection.

Q. Did you undertake to find out whether that grant was located in the United States or not?

A. As nearly as I could; yes, sir.

Q. And you came to the conclusion that it was in the United States, and so reported?

A. Yes, sir.

Q. Did you find out whether the whole of it was in the United States?

A. I could not tell that.

Q. But you became satisfied some, if not all, of it was in the United States?

A. Yes, sir; that was my opinion. I saw it joined the San Pedro.

Q. Do you know when Mendoza died?

A. I do not.

Q. Was he living at the time you were there?

A. I think not.

Q. Was he living at the time this grant was in San Francisco, probably trying to be sold there, about thirty years ago?

A. I am not certain. I was trying to remember. I knew a nephew of his in Altar. He told me that he had died, but I do not remember now when; I think it was before 1860, but I cannot recollect the time now.

Q. The document you have there is not a complete copy of what is in the archives?

A. I think not.

Q. It bears the same general defects as borne in these other cases?

A. Precisely; the same character in every respect, I think.

Redirect examination:

Q. Describe, Mr. Hopkins, what is a borrador.

A. A borrador is from the word "blotter." It is a rough first draft, an instrument from which afterwards a copy is made. It is from the word "blotter."

Q. It merely exhibits what is presumed to be a plat of the land in question described in the matrix and expediente?

A. It purports to be a copy of the grant title—the titulo itself, you know. In California generally a copy of the grant was attached to the proceedings, just as in Hermosillo, and filed away in the same way—that is, with the signatures copied; but sometimes the signatures were not copied.

Q. In your investigation there was it or not a frequent occurrence that the borradors were absent?

A. Yes, sir.

By Mr. REYNOLDS:

Q. Do you know how it happened to be absent in these cases?

A. I do not.

Q. Was any notice attached to the expediente in explanation of why none was there?

—. I do not remember.

Q. Do you remember the endorsement made in 1828 as to why title happened to be issued on this expediente at the time?

A. I had forgotten that; yes, sir.

Q. Until I called your attention to it?

A. Yes, sir; such is the fact. I supposed I had seen it.

By Mr. HERRING:

Q. Was there anything about this grant, from your investigation, to excite your suspicion at all?

A. I think not, sir.

By Mr. HERRING. We now offer in evidence a certified copy of the report made by Mr. Hopkins to the Government of the United States and ask that it be marked Exhibit 2 on behalf of claimants.

(The report is objected to because the witness has undertaken to testify to the facts set up in the report.)

By Mr. HERRING. It is not for that purpose that we offer it. It is offered for the purpose of showing that the subject of this grant has formerly been under inquiry by the authorized agent of the defendant in this case and passed upon to the extent that that report discloses at that time.

(The document offered was admitted subject to the objection and marked "Exhibit 2.")

By Mr. HERRING. We now offer as an exhibit the translation of the titulo, which is here.

By Mr. REYNOLDS. If, upon examination, we have any objection to urge to the translation, we reserve the right to file them.

(Said document marked "Exhibit 3.")

By Mr. HERRING. We next offer a certificate as to the record Toma de Razon, at Hermosillo.

(Said document was admitted and marked "Exhibit 4.")

By Mr. HERRING. The translations are on file in the case already. They are offered also.

(Said documents were thereupon marked "Exhibit 4a.")

By Mr. HERRING. Next we offer copy of deed of sale of the grant in question to the Camou Brothers, with translations.

(Said deed was marked "Exhibit 5" and the translation thereof marked "Exhibit 5a.")

36 Next is the judicial inquiry at Guaymas, held for the purpose of settling the title among the heirs of Elias family at the time of the transfer.

(Said document was marked "Exhibit 6.")

Also dissolution of copartnership between Camou Bros., in Spanish, with translation.

(Said document was marked "Exhibit 7" and the translation thereof "Exhibit 7a.")

Next I offer a certified copy of the titulo of the San Pedro grant, with translation.

(Said document was marked "Exhibit 8" and the translation thereof "Exhibit 8a.")

GEORGE J. ROSKRUGE, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination by Mr. HERRING:

Q. You reside here in Tucson, Arizona?
A. Yes, sir.
Q. How long have you lived in Arizona?
A. 22 years.
Q. Are you or not familiar with the business of surveying and civil engineering?
A. Yes, sir.
Q. Is that your occupation?
A. Yes, sir.
Q. And has been how long?
A. Over 20 years.
Q. State whether at any time you have made a survey of a tract of land known as the San Rafael del Valle land grant.
A. I have.
Q. About what time did you make it?
A. I made it in 1891, in May and June.
Q. At whose request did you make it?
A. At your request, sir—no, but you were present when Mr. Camou requested it.
Q. You made it for Mr. Camou, the claimant in this case?
A. Yes, sir.
Q. What assistants did you have with you, if any, at the time of this survey?
A. I had Mr. John W. Taylor, Ed. Wood, Mr. Douglas Snyder, and a portion of the time Mr. Max Marks was with me.
Q. Was any one else aiding and assisting the perfection of this survey?
A. Your son was down there when I went down first, and also part of the second time, and Mr. Camou was along with me when I went down there. I don't know his name. That was all.

37 Q. Did you have any paper or instrument or description as a suggestion to you?
A. I had a copy of the expediente.
Q. Expediente of what?
A. Of the San Rafael del Valle grant.
Q. Was that in Spanish or in English?
A. It was in English, sir.
Q. Did you have any other papers in relation to the lands described in that vicinity?
A. Not when I went down first.
Q. At any time did you?
A. I did afterwards.
Q. What was the paper?

A. It was a certified copy of the expediente of the roncho of San Pedro.

Q. Did you have it in the Spanish or in the English?

A. In English.

Q. Did you have it in Spanish, also?

A. First, yes, sir; had it translated and afterwards came back and got a certified copy from the surveyor-general's office.

Q. Office at Tucson?

A. Yes, sir; Royal A. Johnson.

Q. Now, with those papers in hand, what did you do?

A. I went down to the valley of the San Pedro.

Q. When you say that, what do you mean, the San Pedro mountains or river?

A. The valley of the San Pedro River, covering a point from Charleston running south to San Pedro, in Mexico; that is where I went first. I went all over that valley and looked for what was described in the expediente as a hill or mountain in the centre of the valley for the central point, and that I failed to find. I then went to the "limy hill," where I found a monument on the top and a post in it that had been set there and marked by Mr. Charles M. Allis.

Q. Who was he, if you know?

A. U. S. deputy surveyor who made a survey of the grant for the United States Government.

Q. Will you explain whether you had any reason for looking for any monument or mark on a limy hill or a post?

A. I say I found a post in a monument on the summit of a limy hill, which was the north centre of the grant, as called for in the expediente, and there was no other limy hill in the whole neighborhood. I never saw anything like it in my life before. It is a very peculiar formation.

Q. Tell the court briefly what that peculiarity was.

A. It looked like a lot of burnt lime—calcarious, or whatever you call it. The whole top was covered with a lot of lime formation like cinders.

Q. Stones fractured—broken—around?

A. Yes, sir.

Q. What did you do then?

38 A. I run from there over towards the east, where I found an old monument, and then I run towards the west.

Q. One moment. When you say you run from there towards the east, in what way did you run; what did you have there?

A. Well, I chained north 85 degrees east 6,204 feet to the summit of a hill, where I found a monument.

Q. Describe that monument.

A. Well, that monument was on the summit of a hill—an old monument, which I took to be the monument of the grant, it being very near to what I would call at right angles to the centre line of the grant coming up the valley. I then came back to the limy hill and run north 81 degrees east 6,600 feet, where I found another monument of stones.

Q. What appearance had that as to age?

A. It looked like an old monument. It wasn't as high or as big, I don't think, as the one I found at the east.

Q. Was the one at the east a monument which had apparently been artificially created there?

A. Yes, sir; it was a monument placed there, built there by some one, of course.

Q. And the one at the west, was it of similar apparent construction?

A. Yes, sir; built of stones carried from somewhere and piled up there.

Q. After finding these two monuments, what next did you do?

A. The next thing I did was to run down the valley and try if I could find from the papers I had the north boundary of the rancho of San Pedro, which is called for in the expediente, being the southern boundary.

Q. Did you chain down from that line?

A. Yes, sir; I chained down through the centre of the valley.

Q. What did you find?

A. I had a translation of the expediente of the San Pedro grant, and I went to a monument that I believed to be the centre of the grant of San Pedro. That monument was a square-built monument, the best monument I have ever seen in Arizona except the boundary monuments.

Q. What was it built of?

A. Stones.

Q. What had it the appearance of?

A. The appearance of being a regularly built monument, built up by a mechanic, not thrown loosely together, but a regular square-built monument.

Q. Was that within the boundaries of the United States?

A. Within the boundaries of the United States; yes, sir.

Q. What did you do then?

A. I then went to Ochoaville, where there are old ruins which answered the description called for in the expediente as going towards the northeast.

Q. What expediente do you refer to?

39 A. Of the San Pedro. There I found a lot of old ruins, and right under the old ruins on the banks of the San Pedro River I found an old monument of stones. I then run further on towards the northeast and found two little hills.

Q. Was the old monument you found at the San Pedro River within the calls of the San Pedro grant?

A. It was on that line, and I believed it to be one of the monuments of the San Pedro grant as called for. Then I continued my line on till I come to a place out from the valley. I found no monument there, but it answered the description of the little hills, and they were the only little hills I found in the whole valley that would answer the description. Then I run over and found a stony hill which is called for in the San Pedro expediente. I am running out the San Pedro expediente now from the centre northeast. I then went to the Bachata Canyon, a point in the San Pedro (interrupted)

Q. Stop there. Did you have any difficulty in finding that Bachata Canyon?

A. No difficulty in finding the canyon at all. It is a large canyon, and I was perfectly satisfied it was the canyon. There I found a monument, but not having a certified copy of the expediente with me at that time, and having no one with me who could tell me if that was the Bachata

Canyon I left then and came back to Tucson and notified your firm that I wanted to be supplied with a certified copy of the expediente, and then wanted to go back there again and be supplied with witnesses who could tell me whether that was the Bachata Canyon, and whether those were the points called for in that expediente.

Q. Subsequent to that time did you return to that valley to continue this survey?

A. I did.

Q. At that time state whether any persons appeared there as witnesses in reference to this name Bachata applying to any canyon.

A. Yes, sir.

Q. Who?

A. An old Mexican by the name of Gonzales, and another by the name of Concepcion Elias.

Q. Concepcion Elias and Antonio Gonzales?

A. Yes, sir. Mr. Douglass accompanied me when I went back. I then went to the monument so well built, the centre of the San Pedro, and I asked the Mexicans, "What monument is this?" They said they didn't know. "How long has it been here?" I said. They said, "A long, long time; ever since I can remember." I pointed to the line monument and asked them, "What is that?" and he says, "That is a line monument; I was a soldier when that monument was built, but this square monument was here several years before the line monument." I said "All right; take me to the ruins," and at the ford—the crossing below the old ruins—Mr. Snyder and myself measured—chained—the distance up to the old ruins. I saw no other old ruins in this valley than these.

I asked if there was any other old ruins in the valley besides these and they said, "No; only away down below Fairbanks."

I said to them, "Can you take me to the ford?" and they took me to the ford, and said that was the old crossing. We could trace the old ruins all over the ground. When I got down to the banks of the river there was a Texan living there (interrupted)

Q. Would you remember the name if you heard it?

A. No, sir; I don't think I would.

Q. Proceed.

A. He came out and says, "What are you doing there?" and we had a talk with him, and he said he had lived there a great while and that it was an old monument.

From there we went over to the little hills—we could see them right in front of us—and we went straight over and told him to take us to the stony hill. They took us to this stony hill, and from there I asked them to take us to the brushy place mentioned in the expediente, but as it was all brush there we couldn't find anything, but we were certain we were on the right track. I told him to take us to the Bachata Canyon, and they took us to the same place where I had been before and said that was Bachata Canyon. That gave us good reasons to believe I had found the northeast corner of San Pedro grant.

Q. What did you find in the canyon?

A. I found an old big monument of stones, and in looking near the monument we could trace out that it had been originally a monument that apparently had been built up square, but the foundation was coming out, similar to the other one, but that it had fallen down.

Q. Did you at that time photograph the initial monument of the San Pedro grant?

A. Yes, sir.

Q. (Exhibiting photograph.) Look at the photograph which is shown you and state what it represents.

A. That is the initial monument of the San Pedro grant, Antonio Gonzales in the immediate foreground, Elias to his immediate right, both sitting on the monument. Mr. Snyder is standing right behind them.

Q. State whether you photographed the little limy or calcarious hill.

A. Yes, sir.

Q. (Exhibiting a photograph.) What does that represent?

A. The limy or calcarious hill, the landmark of the San Rafael del Valle grant, with a post on the summit.

By Mr. HERRING: These two photographs are offered in evidence.

(Said photographs were then marked respectively Exhibit 9 and Exhibit 10.)

Q. Did you make any photograph of the monument you found in the Bachata Canyon?

A. I did.

Q. (Exhibiting another photograph.) Look at the photograph now shown you and state what it represents.

41 A. The old monument on the south bank of the Bachata Canyon, the northeast monument of the San Pedro grant.

(Said photograph was offered in evidence and marked "Exhibit 11.")

Q. [Exhibiting another photograph.] What does this represent?

A. That is a view looking down the Bachata Canyon from the northeast corner of the San Pedro grant.

(Said photograph was offered in evidence and marked "Exhibit 12.")

Q. Did you take a second view of the San Pedro initial monument?

A. Yes, sir; here it is [producing a photograph].

(Said photograph was thereupon offered in evidence and marked "Exhibit 13.")

Q. Did you take any photograph of the old monument at the northeast corner of the San Rafael del Valle?

A. Yes, sir [exhibiting photographs]; that is the old monument, the northeast corner of the San Rafael del Valle, with John Taylor and Ed. Woods standing beside the transit.

(Said photograph was offered in evidence and marked "Exhibit 14.")

Q. Did you take a photograph of the northwest corner?

A. Yes, sir.

Q. [Exhibiting photograph.] What does that represent?

A. That is the old monument at the northwest corner.

(Said photograph was offered in evidence and marked "Exhibit 15.")

Q. Now, having found the Bachata monument and canyon as described, what next did you do?

A. I then run from there due west.

Q. Did you chain from there?

A. Yes, sir.

Q. Yes?

A. Due west to the centre of the valley, right to the San Pedro River.

Q. What did you find there?

A. Didn't find anything.

Q. Did you project that line at all?

A. Went further west; yes, sir; went out and searched on the plain there, but couldn't find a single thing.

Q. Did you establish any corner there on the base line, with the north line of the San Pedro grant as a base line?

A. I merely put in a post there; that is all.

Q. At what distance from any other given point, if you remember, about?

42 A. 13,100 feet from the monument in the Bachata Canyon.

Q. From where to where?

A. From the monument on the Bachata Canyon to the San Pedro River.

Q. Well, what other lines, if any, did you run in that survey?

A. I run from the north centre down to this point that I marked for the south centre.

Q. That you have just described?

A. Yes, sir.

Q. Any other lines?

A. I run lines between those—all around those fences on the grant.

Q. There were fences on the grant?

A. Yes, sir.

Q. At this time did you take any other photographic views of the physical condition of the surface of the earth in the neighborhood of that grant?

A. [Producing another photograph.] Here is one; a San Pedro grant monument on the Rocky Hill in front of the Sierra de Huachuca.

Q. "Sierra de Huachuca" is called for in the calls of the expediente?

A. Of the San Pedro grant; yes, sir.

(Said photograph was offered in evidence and marked "Exhibit 16.")

By the WITNESS. Here is a photograph of hills on the east side of the San Pedro River, Pyatt's house at the foot of the hill, "the line terminating in the valley at the skirt of a hill, at the distance therefrom of 3 cords, where I caused a corner monument to be placed." It is looking southwest.

Q. You are there quoting from the calls of the expediente?

A. Yes, sir.

(Said photograph was thereupon offered in evidence and marked "Exhibit 17.")

By the WITNESS. Here [producing another photograph] is a photograph of the "Sierra de Huachuca," from the monument on the Rocky Hill in front of the Huachuca Mountains. That is a better photograph than the other one.

Q. That is a different view?

A. Yes, sir.

Q. Called for in the expediente?

A. Yes, sir.

(Said photograph was offered in evidence and marked "Exhibit 18.")

Q. Any other?

A. [Producing another photograph.] Here is another photograph showing the Huachuca Mountains in the rear.

43 (Said photograph was offered in evidence and marked "Exhibit 19.")

By the WITNESS: Here is a view marked "View looking from the post S. R. G. No. 8 to old N. E. corner monument of the San Rafael del Valle P. L. C. monument on hill in centre."

(Said photograph was offered in evidence and marked "Exhibit 20.")

Q. Do you know whether any statement or declaration was taken from this old Mexican or these old Mexican witnesses at the time that they appeared there to point out the marks and objects to which you have referred?

A. Yes, sir; there was a statement taken.

Q. Who took that statement?

A. Your son, sir; in my presence.

Q. Do you know who else was present at that time?

A. Well, Mr. Douglass Snyder was there and Mr. Marks, but I can't recollect whether they were then present; they were all in the room together.

By Mr. HERRING: We offer those statements in the absence of the witnesses.

By Mr. REYNOLDS: The witnesses are alive and are in this town, and we object to the statements for any purpose.

By Mr. HERRING: We have no knowledge of their being here. Do you know that they are here?

By Mr. REYNOLDS: We brought them here. They were here yesterday.

By Mr. HERRING: We will take a subpœna, Mr. Clerk, for Concepcion Elias and Antonio Gonzales on behalf of the claimants in this case.

Q. Did you make any calculation of the area within the lines surveyed which you have described?

A. Yes, sir.

Q. The area of the plot described by you?

A. 20,034.62 acres.

Q. State whether you made a map from the data which you obtained by this survey that you have described.

A. I did, sir.

Q. Look at the paper now presented to you and state whether or not that is the map which you made.

A. I believe it to be; yes.

Q. Is it a correct delineation of what you saw and found upon the surface of the earth at the point described by you?

A. Yes, sir.

By Mr. HERRING: This map is offered in evidence.

(Same marked "Exhibit 21.")

44 Cross-examination by Mr. REYNOLDS:

Q. Did you take the expediente or testimonio and undertake to retrace the steps of the surveyor as laid down in that instrument?

A. I had that expediente with me; yes.

Q. I ask you, did you undertake to retrace his steps?

A. I did.

Q. Did you undertake to make the measurements that he is alleged to have made?

A. No, sir.

Q. Why?

A. Because, in the first place, I could not find the centre of the grant. The only way I could do was to go to the north centre, a well-known point, and then find the south point by going over the San Pedro grant.

Q. Why not go to the north line of the San Pedro grant to start with?

A. Because that line is called for as the south line of the San Rafael del Valle grant.

Q. If you could not find the initial point, why didn't you take that point and measure back?

A. Oh, I measured down and tried to find that point and couldn't. I hunted all over for the centre point and couldn't find it, sir.

Q. You could not find the initial point of this grant?

A. No, sir.

Q. You went to the subordinate points—his north line of the San Pedro, which is the south line of the San Rafael del Valle?

A. Yes, sir.

Q. Why did you take that north line as a subordinate point to start with?

A. I had to find it.

Q. You located the north line of the San Pedro grant in the United States?

A. Yes, sir.

Q. You are satisfied it is in the United States?

A. Yes, sir.

Q. How far inside of the line?

A. The centre monument, I should say, is half a mile inside of the United States—that is, what I believe to be the centre monument.

Q. Yes.

A. Using my best judgment; yes, sir.

Q. Did you go to the initial monument of the San Pedro grant?

A. That is what I supposed to be the initial monument.

Q. Your survey is based largely on the fact that you located the initial monument of the San Pedro grant in the United States?

A. Yes, sir.

Q. Then your survey is wrong if as a matter of fact it is in Mexico—the initial point of the San Pedro grant?

A. I don't know that it is.

45 Q. I say if the initial point is in old Mexico your survey is wrong.

A. No; I don't say that, even.

Q. You do not?

A. No, sir.

Q. Suppose the initial point were about ten miles south of the line—the initial monument of the San Pedro grant should turn out to be about ten miles south of the line—then your survey is wrong?

A. No; I don't say even then that it is wrong.

Q. Why?

A. Because they might have shifted that grant. They can't come between the Huachuca and the Mule mountains from ten miles below there. Faith can move mountains, but I'll be dog-goned if they can.

Q. Are there any other limestone hills along the San Pedro?
A. I didn't find anything in the world that looked like that.
Q. Did you go south of the line?
A. I went all over it; I went down around the mesas, and I hunted the whole country over.
Q. Did you go clear down to the San Pedro ranch?
A. Where the custom-house is?
Q. I don't know anything about that.
A. Yes; I went down there twice.
Q. You went clear down to Mexico, on the San Pedro ranch?
A. Yes, sir.
Q. Did you find any limestone hills there?
A. I don't know that I did.
Q. Did you hunt for any?
A. When I went along I was keeping my eyes open.
Q. If there should turn out to be some there now, they were probably there then?
A. If you can convince me that I am wrong, I am perfectly willing to acknowledge, but I believe I am right.
Q. You believe there are no other limesone hills to be found along the San Pedro River down below the international boundary line?
A. There is no hill below this point. This is the most curious looking hill you ever saw, and there is nothing like it in the whole country. I looked for hills there and all around.
Q. Now let us go over the expediente. It says, in the presence of the interested party the measurement was begun at a place where there were several small hills.
A. Yes, sir.
Q. Did you find that point?
A. That is the point I told you I did not find.
Q. You did not?
A. No, sir.
Q. Then, "continuing a south course, there were measured and counted two hundred cords, the line terminating at the line of the rancho of San Pedro." Did you find the rancho of San Pedro near that line?
46 A. I found the rancho of San Pedro away down in Mexico.
Q. Did you undertake to find whether there were some small hills north of that? You say you found the Rancho San Pedro south of the line.
A. I found a ranch called San Pedro; yes, sir.
Q. And did you find any small hills north of that ranch?
A. I don't recollect of any small hills north of that ranch till I come up this side of the line, probably about a mile, and then there were some small hills.
Q. Would they have answered this call?
A. Well, it would have been a terrible stretch if they did.
Q. Wouldn't they come as near answering this call as a pile of stones answers your monuments out there?
A. No, sir.
Q. How far did you continue north before you located these hills?
A. Which do you refer to?

Q. I am speaking of the small hills at which the survey is located.

A. I never found any.

Q. There were some small hills north of the San Pedro ranch—as you found the ranch in Mexico—at the time?

A. Yes, sir.

Q. (Reading:) "And in his name was present the administrator of said rancho, with documents showing that his measurement extended to that point, etc. Returning to the centre, the course was run to the north two hundred cords, which terminated in the same valley, at a point at which there is a small limy hill." Now, how far north from the San Pedro ranch do you locate this small limestone hill?

A. As near as I can tell, probably a good twenty-five miles from the San Pedro ranch.

Q. And that you take as the north centre monument?

A. Yes, sir; that is what I take it for and believe it to be.

Q. Twenty-five miles north of the San Pedro ranch you found a little limestone hill (interrupted)—

By Mr. HERRING:

Q. Are you speaking of the ranch or the ranch house now?

A. I am talking about the San Pedro custom-house. That is the only San Pedro I know. That is eight or ten miles below the line—where Mr. Elias lives.

By Mr. REYNOLDS (continuing):

Q. How far north of the international boundary line is that little limestone hill?

A. Oh, probably between fifteen or twenty miles, as far as I can remember.

Q. (Reading:) "At which place I ordered a pile of stones to be put for a monument." Did you find that monument?

A. I found a monument there.

Q. You were 25 miles from the ranch house of the San Pedro ranch—north?

47 A. I should say that much; yes.

Q. Returning to the centre then, fifty cords are said to have been measured to the east, terminating in the valley in front of the Mule Mountains. Did you run that line?

A. I went and hunted that monument, but did not find it.

Q. Did you run fifty cords?

A. I believe I did.

Q. Where did it land you?

A. I think somewhere in the mesa.

Q. How far from the Mule Mountain?

A. The Mule Mountains were on one side and the Huachucas on the other.

Q. How far away were the Mule Mountains?

A. Oh, eight or ten miles.

Q. You did not find any pile of stones there?

A. No, sir.

Q. Returning then to the centre, fifty cords were measured to the west, terminating in the same valley in front of the cordillera of the Sierra de

Hauchuca, at which place a pile of stones was placed for a monument. Did you find that?

A. No, sir; I hunted and hunted for it, and we all hunted for it.

Q. How far did you run that west line from the north centre monument?

A. We didn't go any further west than just about the fifty cords.

Q. And there you searched for a monument, but didn't find it?

A. Didn't find it; no, sir.

Q. How did you make your line on this side? Did you establish a monument there and stop your survey there?

A. I didn't establish any monuments at all.

Q. Did you stop your survey there and draw in your line there?

A. When I came down to the bank of the river and run my line from the limy hill south on my plat I took the distance called for in the expediente—fifty cords—and measured them out and drew my lines from northeast and southeast down, showing what I believed to be the land covered by that expediente between the San Pedro and the limy hill.

Q. Did you pay any attention to the area as designated in the expediente?

A. No, sir.

Q. How did you designate that first course that you laid off from the north centre monument—so many degrees? Where did you get that?

A. I got that in platting it off.

Q. You did not take it with an instrument?

A. No, sir; you couldn't. I run down on Allis's course for ten and a half miles and found the place for the monument and went and checked back on it, and from there I run further south, connecting with a flag that I left on the bank of the river, which I put there after running east from the Bachata Cañon.

48 Q. You took as a basis of this survey the monument established by Mr. Allis, didn't you—the one with a pole in it?

A. I took the hill with a monument on top of it, sir.

Q. As a basis of your survey?

A. Yes, sir.

Q. Now, Mr. Roskruge, having established these subordinate points, ought you not to have been able to have correctly established the initial monument? Having established to your satisfaction these subordinate points of the survey, oughtn't you to be able to establish the initial point of the survey?

A. Yes, sir; if the measurements were exactly correct.

Q. But even if the measurements were approximately correct?

A. There was nothing to establish it with.

Q. You established the subordinate points?

A. Yes, sir.

Q. And from the subordinate points you made the survey?

A. Yes, sir.

Q. Now, from that you ought to be able, had you not, to establish the initial point?

A. Yes, sir.

Q. Did you try to do that?

A. Did I try to establish it?

Q. Yes, sir.

A. No, sir; I looked and hunted for it over the country and could not find it as described in the expediente.

Q. Then, as a matter of fact, there is no such initial point as designated in this expediente in the valley of the San Pedro included within your survey?

A. I could not find it, sir.

Q. The only initial point you know is the north centre monument located by Mr. Allis?

A. No, no; not located by him; it was taken by him.

Q. Yes. Then the expediente is without any initial point, so far as you know or are able to determine by the calls of the instrument within the confines of the survey you have testified to here to-day?

A. I could not find it.

Q. Outside of the confines of the survey, and up the San Pedro, towards the San Pedro ranch, did you ever look to find any such natural object as called for here going down and across the line?

A. Yes; and the only little hills that I could find were the ones that were called for in the San Pedro grant, the second course from the ford.

Q. They were down on the San Pedro ranch?

A. That was supposed to be one of the monuments of the San Pedro ranch.

Q. If it should turn out in the testimony, or if it should turn out as a matter of fact that the little hills did not fall within the San Pedro ranch, but were north of it—ranch or grant I am talking about now, as designated in these title papers (interrupted)——

49 A. There is a lot I can't tell you about that is in evidence, but (interrupted)

Q. I say, if it should turn out that there are a lot of little limestone hills lying without the San Pedro ranch and north of it and in this valley, might not they be the initial point, and would not they answer very well for the initial point under the circumstances?

A. I couldn't tell you anything along that whole valley that would answer the calls for that initial point.

Q. Didn't you say you found away above some limestone hills?

A. That for the north centre.

Q. But no small hills?

A. No.

Q. In the absence of finding any other small hills and it should turn out that the small hills you did find fell without the San Pedro grant, would you not conclude, if that survey had been made and this grant located by those hills, that that was the initial point of the survey?

A. Yes, sir; of course, if it could be proved to be so.

Q. But suppose they were the only hills and they did not fall within the San Pedro ranch and are north of it in the San Pedro Valley and you can't find any others, would not you take those to make your survey from?

A. I expect it would have to be, but the trouble with that is you can't move the mountains down that way; you have to get between the Huachucas and the Mule Mountains.

Q. Then you mean to say with this survey this grant can not be located in the manner in which it is located in this expediente?

A. Yes, sir; that grant can be located to this extent, that from the north centre to the north line of the San Pedro it can be located. There might have been a big monument in the centre of that valley that was washed away, but I didn't find any, understand.

Q. You did not get the north centre monument by virtue of any measurement, did you?

A. No; went right there.

Q. Took it arbitrarily?

A. Yes, sir; went right to the north centre monument; you couldn't get a measurement from anywhere.

Q. If you should take the north line of the San Pedro ranch as located and measure the north and south lines called for in this expediente it would not take you to the north centre monument?

A. No, sir.

Q. It would fall away short of it?

A. Yes, sir; twelve thousand feet, I think.

Q. Did you calculate the area of this grant as surveyed?

A. Yes, sir.

Q. What is it?

A. Twenty thousand-odd acres.

Q. Did you run all of the lines?

A. Not the out-side lines. I run the line down the centre.

Q. Was it a straight line?

50 A. No, sir.

Q. You run the end lines?

A. Yes, sir.

Q. And squared it?

A. Yes, sir. Not squared it either; I run across whatever courses they were.

Q. Did you undertake to make a rectangle out of it?

A. No; I run the lines as marked on the ground for the centre.

Q. Do you know, now, where the San Pedro grant is located?

A. I believe it is located right in Arizona. I know where it is down there below, you understand. Mr. Elias had leased a lot of land this side of the line, and Mrs. Elias told me the north line of the San Pedro was above Hereford.

Q. It is a wonder they didn't take in Tucson?

A. His memory suddenly failed him, I guess.

Q. If Mr. Elias had had his San Pedro grant measured, surveyed, and confirmed in Mexico and had denounced and bought the demacias correctly as being located in Mexico, then the grant would be in Mexico, I suppose, wouldn't it?

A. I don't know anything about that.

(Objected to as argumentative.)

Q. The' your grant, if you had gone to the north line of the San Pedro as your first subordinate point with which to verify your survey, it would not have been the same as it is by starting at the north centre monument, would it? Instead of taking your starting point at the north line of the San Pedro grant, if you had started from there and verified north, it would not have been the same as it is now, having started north and verified south?

A. Of course it would, if I started from the line I run from the Bachata Cañon.

Q. Locate the Bachata Cañon on this map.

A. (Witness did so.) That is what they tell me, understand.

Q. Now point out the first place you went to here.

A. Right there [indicating on the map].

Q. And how did you undertake to find your centre monument? What is the first course you run?

A. Right over here [indicating].

Q. And what did you find?

A. A monument of stones on top of that hill.

Q. And that is the reason you stopped there?

A. Yes, sir.

Q. What kind of a monument—an ordinary pile of stones like the balance of them in this country?

A. Yes, sir.

Q. And how did you establish this point [indicating]?

A. By the monument there.

Q. Was there any other there?

A. No, sir.

Q. Did you look for any?

51 A. Yes, sir.

Q. The same kind of a pile of stones?

A. Ordinary pile of stones; yes.

Q. Did you go further west to find any other pile of stones?

A. Hunted around like I naturally would to see if there was any more around there, and didn't find any.

Q. Did you undertake *the* verify the measurements with the expediente?

A. I know they were short, because I found Mr. Allis's monument out there.

Q. Where was that?

A. Further out here [indicating].

Q. Further than yours?

A. Yes, sir; Mr. Allis's monument was out here.

Q. Not the same as yours?

A. No, sir; I think it was longer.

Q. How did you establish this point [indicating the S. E. corner]?

A. There is nothing established right there; that is merely protracted down here [indicating].

Q. You undertook to protract these lines parallel with the river?

A. Yes, sir.

Q. Leaving out its meanderings?

A. Yes, sir.

Q. And you protracted to the north end of the San Pedro ranch?

A. Yes, sir.

Q. And that is the survey?

A. Yes, sir.

Q. I want to ask you the question—if you had taken the expediente and it become necessary for you to establish the initial point, could you have made the survey?

A. No, sir; I don't believe I could, unless—I will add this—unless I was to measure down the two hundred cords from that limy hill and wherever they come out, running down the San Pedro Valley there, I could establish the corner.

Q. If you had attempted to make the survey as made by the Mexican officials, by establishing the centre monument and then making your survey from that centre monument, could you have made that survey—could you have made any survey from the title papers?

A. I didn't catch that.

Q. If you were required to establish your initial monument first and then make the survey according to the expediente, could you have made it?

A. I would have to go to that limy hill (interrupted).

Q. Answer the question. I say, if you were required to take the papers and go on the ground and hunt for and find your initial point, and from that extend your survey, could it have been made?

A. I have told you a dozen times I could not find the point.

Q. I am asking you whether the survey could be made from the initial point called for in this expediente?

52 A. Of course, you locate it one way and I another. I tell you I couldn't find the initial point.

Q. Then you can not go there on the ground and find an initial point so as to verify the survey made by the officer who was out there surveying it?

A. No, sir.

Q. You can not take this expediente and go out there on the ground and verify it as he alleged he made it?

A. I can to a certain extent, being satisfied with that hill, you understand, and then the grant on the south. You must mind, these fellows might have made a mistake, too, like mining claims in this country. Ninety-five per cent of the surveys that come into the surveyor-general's office the courses ain't right and the distances ain't right, and this is about the same thing.

Q. Can you take this expediente and go out there and find the initial point from which he protracted this survey on the ground?

A. No, sir.

Redirect examination:

Q. Are you thoroughly familiar with the situation of the Huachuca Mountains to which you have referred?

A. Yes, sir.

Q. Now, I want you to state what is the general course and direction of those mountains.

A. They are north and south.

Q. And are you familiar also with the position of the international boundary line between Sonora and Arizona?

A. Yes, sir.

Q. Will you state whether the Huachuca Mountains extend south below that boundary line?

A. Very little, sir; probably a mile or two; not more.

Q. Do they extend at all below that boundary line that you know?

A. The main mountain, no; just the lowest point of it.

Q. The low foothills?

A. Yes, sir.

Q. Are you familiar with the general course and direction of the Mule Mountains?

A. Yes, sir.

Q. Will you state whether the Mule Mountains extend southerly, south of the international boundary line?

A. No, sir; don't come anywhere near it; probably two or three miles of it.

Q. Then, if you have that limy peak to be taken into consideration in making your survey of this grant and establishing its position on the surface of the earth with relation to its calls and with relation to these mountains described, can you find that grant?

A. Yes, sir.

Q. And did you so find it?

A. That is what I did.

53 Q. Will you describe this Bachata gulch or cañon to the court with a little more particularity?

A. The Bachata cañon or gulch is a large cañon that comes out of the Mule Mountains and runs into the San Pedro Valley.

Q. Do you know of any other Bachata cañon on the westerly slope of the Mule Mountains?

A. No, sir.

Q. Do you know of any other Bachata cañon in the county of Cochise?

A. No, sir; nor in the whole United States. That is the only one I ever heard of or know of.

Q. North of the point with the Huachuca Mountains on the west and the Mule Mountains on the east, is there any other limy point than the one you have described?

A. No, sir.

Q. Did you search?

A. Yes, sir; I went up and down the valley again and again, and I searched all over the country there. I went out there to do a fair and square job, and I did it.

Q. In relation to the monuments on the north end of the grant, you stated they were a pile of stones.

A. Yes, sir.

Q. I did not ask you in relation to their being artificially erected there, but I wish you would state whether from their appearance they had any indication of being artificially erected—those stones.

A. They were nothing but what I would call an ordinary pile of stones; they were not built up regularly like the one I found that I considered the centre of the San Pedro; they were merely what anybody would go there and put up for a corner; they were just a big pile of stones.

Q. Just a big pile of stones?

A. The one on the northeast, if I recollect, or the one on top of the hill could not be a very big pile of stones because there wasn't much room for it and there wasn't many stones. The photographs will tell it better than I can.

Recross-examination:

Q. You were hunting for a limestone hill in front of the Huachuca Mountains, were you not?

A. I don't know whether it is so described in the expediente. I do not recollect.

Q. I am asking you what you were hunting for. It is in front of the Huachuca Mountains?

A. I don't think there is anything said about that limy hill in connection with the Huachuca Mountains.

Q. You do not?

A. No; I don't remember now; but in the San Pedro grant there the calls say in front of the Huachuca Mountains; that I remember distinctly.

54 Q. Didn't you, just a few moments ago, undertake to locate that limestone hill by the fact of the location of the Huachuca Mountains?

A. No, sir; I don't think I did; if I did, I misunderstood your question.

Q. If you did you made a mistake?

A. Yes, sir; probably I was talking about [interrupted].

By Mr. HERRING. We were then discussing the centre point of this grant.

Q. What monument is it located with reference to the Huachuca Mountains?

A. The one called the stony hill of the San Pedro.

Q. Does this grant call for any monument located with reference to the Huachuca Mountains?

A. I don't think it does.

Q. If I should say the west centre monument is called for in front of these Huachuca Mountains, you would say you were mistaken all along about that?

A. Not mistaken, because I haven't looked at the expediente for some time.

Q. Is it not a fact that the west centre monument called for in this grant is located with reference to the Huachuca Mountains?

A. I can't remember all about that. If it is in there I saw it when I was there, and that's all about that.

Q. (Reading:) "Returning to the centre, the measurement was continued towards the west, etc., the line terminating in the valley in front of the Huachuca Mountains." If I say to you that is the only place where the mountains are referred to, then it might be near the San Pedro ranch, and still in front of those mountains?

A. I would not call it "in front." I would not call it in front of a house when you run around the side of the house. The mountains are standing right here [indicating on the map], full abreast of you.

Q. Is that about the correct location of the Huachuca Mountains and the Mule Mountains [referring to map of Cochise County]?

A. I should say they were.

Q. Pretty nearly parallel with the general direction of this grant on either side of it, aren't they?

A. Yes, sir; that's what they are; that is what I say. They run north and south, and this is in the same general direction.

Q. In other words, the way you have located the grant is almost parallel with them?

A. Yes, sir; so the centre monument would be about there [indicating]. You could not get it anywhere down here [indicating a point further south on the map].

Q. You could put it anywhere in front of the mountains?

A. But you can't put it at the end and call it "in front."

Q. How long are those mountains?

55 A. You may go up and down the valley anywheres, but when you get to the San Pedro you are at the end of it.

Q. The west centre monument could have been a few hundred yards above the end of it and still away south of where you located the centre of it?

A. No; where I located the centre of it was right in front.

Q. Couldn't you locate it somewhere else in front of the Huachucas and still be in front?

A. Yes, sir; but you wouldn't want to go too far, understand.

Q. Look at that map and see if it is comparatively topographically correct. Would not your west centre monument fall at the upper end of it?

A. But when you stand "in front" of a mountain you run your arms out this way [illustrating], and there it is in front of you.

Q. There are mountains right directly west?

A. Yes; of course.

Q. And if you run a due east-and-west line you would not go southwest to strike a ranch?

A. When a man wants to get in front of anything he throws his arms out this way [illustrating]. I have done that thousands of times, and I would not call the front of the mountains where you point it out; that would be away up towards Igo's place. It may be that the map is not correct (referring to map of Cochise County), only I don't want to dispute it. I couldn't say whether it is or not.

By Mr. HERRING. The Huachuca Mountains are not correctly represented on there.

IGNACIO BONILLAS, a witness called and sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. FORD:

Q. State your full name and occupation.

A. My name is Ignacio Bonillas, and I am a mining engineer and surveyor.

Q. How long have you been a surveyor, and where?

A. For 11 years, in the State of Sonora and in this Territory.

Q. What knowledge, if any, have you of the location of the international boundary line as it runs between the Huachuca Mountains on the west and the Mule Mountains on the east?

A. The knowledge that I have is by having made surveys there and retracing the United States boundary line, and I find that the line runs just through the southern extremety of the Huachuca Mountains and does

not touch the Mule Mountains at all; it leaves the Mule Mountains to the north.

56 Cross-examination by Mr. REYNOLDS:

Q. Did you ever have occasion to survey the San Pedro ranch?

Objected to as not cross-examination.

By Mr. REYNOLDS. I will make him my own witness and you may cross-examine him.

Q. It is the land formerly owned by Don Jesus Perez?

A. I don't know who purchased it. I have made surveys of several San Pedro ranches in Sonora.

Q. I mean the first one lying south of the international boundary line?

A. Do you mean the San Pedro Palominas?

Q. Yes, sir.

A. Yes, sir; I have.

Q. Did you find the initial point of that grant?

A. The survey that I made of that grant was under peculiar circumstances. I didn't have to look for that initial point or for any other point called for in the expediente. It was simply a resurvey of a survey that had been made previously.

Q. Well, in making your survey you used the expediente for the purpose of verifying and correcting the former survey?

A. I did not.

Q. What did you use?

A. I used simply the map and field notes of the previous survey.

Q. Who made it?

A. They were made by a Spanish surveyor by the name of Pedro Bamolera.

Q. What did you survey?

A. I made a resurvey of the land that he had surveyed.

Q. Did you locate it south of the line?

A. Yes, sir.

Q. Was there any surplus between that and the international boundary line.

A. What do you mean?

Q. Any demasias?

A. Yes sir; I made a survey of all land that Bamolera had surveyed south of the boundary line.

Q. [Exhibiting map.] Did you make that map?

A. It is mine; yes, sir.

Q. Is that map correct?

A. Yes, sir.

Q. Is that the location of the San Pedro ranch or grant?

A. That is the location as Mr. Bamolera gave it and the resurvey which I made of it.

Q. Do you know whether that is recognized by the Mexican Government as being a proper survey of that grant according to the expediente?

57 (Objected to for the reason that any recognition by a foreign government cannot affect the parties to this suit, and as mere hearsay.)

Q. Are you acquainted with the natural objects down in that country?

A. The natural objects, such as mountains and so on?

Q. Yes, sir; along that river?

A. Somewhat.

Q. Continuing the north line of this grant as laid down and going down the San Pedro River, are there any small hills to be located along north of that line?

A. Just the borders of the valley all along.

Q. Are there hills?

A. I should call them lomas—low hills—yes, sir.

Q. All the way along up the river?

A. Not all the way along.

Q. Well, different places. I do not mean continuously.

A. Yes, sir; in some places there are.

Q. Do they come up to the international boundary line?

A. I believe they do; yes, sir.

Q. And they are along what is called the San Pedro River, that runs up into Arizona?

A. Yes, sir.

Q. Is not that a map of the San Pedro grant as now occupied by its claimants?

(Objected to as before.)

By the COURT. We do not think that is competent.

Q. Do you know what that centre monument is in that grant or that plat? Are you familiar with that? Have you ever been to it?

A. The south centre monument?

Q. No; the initial centre monument of the San Pedro grant.

A. No, sir; there is not supposed to be any monument there at all.

Q. Are you acquainted with the north centre monument of that grant?

A. Of the San Pedro grant?

Q. Yes, sir.

A. No, sir.

Q. Have you ever been to it?

A. No, sir.

Q. How did you survey the demasias?

A. I simply made a resurvey of what a man had done before.

Q. You went onto the ground to do it?

A. Yes, sir.

Q. And that is a correct location that you make, according to your verification of his survey?

A. Yes, sir.

58 Q. You verified the lines that he run?

A. Yes, sir.

Q. Was he a reasonably expert surveyor?

A. I do not know, sir.

Q. Well, did you find his lines out very much?

A. I found some mistakes, and that was the reason I was appointed to make the resurvey—to correct those mistakes.

Q. Well, that grant as located by him and relocated by you, or the lines re-run by you, is entirely within Old Mexico?

(Objected to because there is no evidence before the court that the former surveyor of this tract ever located this grant at all, or this witness either.

Objection overruled.)

A. Yes, sir; it is.

Q. And this is a correct map, as re-run by you?

A. Yes, sir.

By Mr. REYNOLDS: Now, I offer this map in evidence.

By Mr. FORD: We will cross-examine him on that.

By Mr. HERRING: It is not proven, and we object to it as hearsay.

By the COURT: The court understood him to say that he made it.

Q. That is a correct map by your lines?

A. Yes, sir.

By Mr. HERRING: A correct map from another plat.

By the COURT:

Q. It is correct as made by your survey?

A. Yes, sir.

By Mr. REYNOLDS:

Q. In other words, it is a correct survey?

A. Yes, sir.

Cross-examination by Mr. FORD:

Q. In making that map you did not have the expediente of the San Pedro grant with you?

A. No, sir; I did not.

Q. You did not pretend to locate the calls of the San Pedro grant?

A. No, sir; I did not.

Q. You do not know whether that locates the calls of the San Pedro grant as described in the expediente, do you?

A. I don't know whether it does or not.

Q. You simply run certain lines which had been run by a former surveyor?

A. Yes, sir; that is what I was appointed to do.

Q. Whether those lines as run by him conform to the calls of the expediente in any way you do not know, do you?

A. No, sir; I do not.

59 Q. You did not pretend, then, in making this map to locate a grant from title papers?

A. No, sir; I did not, but simply to correct a survey made before.

Q. You do not know, then, whether that map in any respect locates the grant according to the calls of the expediente?

A. No, sir; I do not. I said it was correct as to distances and courses that are marked on it.

Q. What the natural monument called for in the San Pedro grant is and where it is you don't know, do you?

A. I haven't any recollection.

Redirect examination:

Q. Do you know of any other San Pedro grant in that vicinity on the San Pedro River?

A. No, sir; I do not.

Q. The original grant is four square leagues?

A. The "cabida legal" is supposed to be four square leagues.

Q. Did you have occasion to read the calls in the expediente or testimonio of this San Pedro grant we have been talking about?

A. Yes, sir; a long time ago I remember to have read the expediente de San Pedro.

Q. I wish you would translate that "cabida legal" into English.

A. It means the area called for in the title papers of a grant.

Q. What is your best impression, Mr. Bonillas, from your knowledge of that country obtained in any way, as to the correct location of the four square leagues as the area called for in the San Pedro title papers?

(Objected to because no foundation has been laid for the question. Objection overruled.)

A. I could not form any opinion about it.

Q. Have you no opinion now?

A. Nothing more than from this work I did.

Q. I don't care how you obtained your information. I want your opinion now.

(Objected to because the witness has no data other than that stated, and he is shown to be incompetent at this time to state an opinion.)

By the COURT. He has already testified to the correctness of that plat and the area.

(The said map was thereupon offered in evidence and marked Exhibit "A" for the Government.

Objected to. Objection overruled.)

DOUGLASS SNYDER, a witness called and sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. HERRING:

Q. You reside here?

A. I do.

60 Q. Are you acquainted with George J. Roskruge?

A. I am.

Q. State whether in the spring of 1891 you were associated with him in making a survey.

A. I went with him in the latter part of May into Cochise County to assist in surveying the ranch of San Rafael del Valle.

Q. Were you present at any time when the parties known as Concepcion Elias and Antonio Gonzales, two Mexicans, old men, came onto the ground?

A. I was.

Q. What particular object, then, if anything, was under investigation in this survey?

A. Well, as I understood it, it was to try to determine either the south end of the San Rafael del Valle or the north end of the San Pedro grant.

Q. And when these Mexicans came there do you remember what transpired there?

A. Yes, sir. They took us over to a monument, an odd monument, there, partially torn down, fallen down, close to the boundary line. Mr. Roskruge asked them at that time what that monument was, and they said they didn't know. He asked when it was put there, and one of them—I think it was Gonzales, but I could not be sure—said he was a

soldier there at the time the boundary line was established, and that that monument was there long before that.

Q. Did they go to any other place with Mr. Roskruge that you saw, or with both of you?

A. Mr. Roskruge asked them to take us to Bachata Cañon—first to take us to the old ford, and they took us to Ochoaville and a little beyond it to the old ford, and we there crossed the river and skirted along some low hills that lay off to the east from the river, and finally we arrived at Bachata Cañon.

Q. How do you know you arrived at Bachata Cañon?

A. By the information they gave us.

Q. Were they together there?

A. Yes, sir.

Q. When you got into that Bachata Cañon what did you find there?

A. We found on the bank of the cañon quite a large monument.

Q. What was it built of?

A. Rock.

Q. What was its general appearance?

A. Well, it had the appearance of being a monument that had been built there a very long time, judging from the drift and vegitation and stuff banked up around it.

Q. You have been out frequently before with surveys?

A. Yes, sir.

Q. With different parties?

A. Yes, sir.

Q. And in different parts of this country?

A. Yes, sir.

61 Q. Was it such an old monument as is usually found in a rim or circle of stones, which indicate Aztec or Indian mounds?

A. That is pretty hard to say. In some countries where sand drifts it will drift up wonderfully; but this was on a rocky mesa and there wasn't much chance for it to drift. It evidently had been there a great many years.

Q. Artificially built there?

A. Yes, sir.

Cross-examination by Mr. REYNOLDS:

Q. How far from the international boundary monument is the monument you speak of?

A. Well, I couldn't tell you. I know after we crossed the river we rode horseback, and was riding along through the brush, and we must have been an hour and a half or two hours riding. That is as near as I could get at the distance.

Q. I am not talking about the Bachata monument, but the old monument that was partially fallen down?

A. It is not a great ways; probably a quarter of a mile. It is right in plain sight of the old monument, looking diagonally across the valley.

Q. And the monument you found at the Bachata Cañon was a usual pile of stones like those seen all over that country? You have seen a great many of them, haven't you?

A. Oh, yes; I have seen them, but not a great many of them.

Q. No; but is not that character of stones all over the country?
A. I have been in all mining camps and seen stones piled up.
Q. I am not speaking of camps, but away from camps—along the valleys and on the mesas. You find them there—a great many of them?
A. Yes, sir; but in that country we hadn't been very fortunate in finding them. We rode several days and couldn't find any. It was a large monument, and I couldn't conceive what it was there for.
Q. How high was it?
A. It was a good-size monument and probably had fallen down some, too; quite a large monument.
Q. What was the size of the stones?
A. Larger at the bottom and smaller as you got up.
Q. Larger than your fist?
A. Oh, yes; at the bottom some were big boulders.
Q. How large?
A. Probably this size [indicating about 18 inches]. I never had my attention called to it again.
Q. A man might lift any one of them?
A. Oh, yes.
Q. And carry it without any difficulty?
A. It would depend on the strength of the man. I could myself, I think.
62 Q. How wide was that at the base?
A. Excuse me. I want to know that I understand the monument you are speaking about.
Q. The one you found at the mouth of the Bachata Cañon?
A. Yes; I understand you now.
By Mr. REYNOLDS. Well, that is all.

MAX MARKS, a witness called and sworn on behalf of the aforesaid petitioner, testified as follows:

Direct examination by Mr. HERRING:
Q. Where do you now reside, Mr. Marks?
A. Sonora.
Q. You formerly resided in this Territory?
A. In Tombstone; yes.
Q. Do you know the last witness?
A. Yes, sir.
Q. And Mr. Roskruge?
A. Yes, sir.
Q. State whether in the spring of 1891 you were with these parties in investigating any survey business in the San Pedro Valley, in Cochise County.
A. I was, for some few days.
Q. Do you know that country pretty well down there?
A. Yes, sir; I lived down there.
Q. How long did you live down there?
A. Five years; at the San Pedro custom-house.
Q. How long ago was that?
A. No; I lived there three years; right at the custom-house.
Q. Within quite recent period?

A. Yes, sir; I think from 1884 to 1888, or something like that. I think I lived five years about there.

Q. Will you state whether at any time you were there in relation to this survey, or assisting at all.

A. Some; yes.

Q. Do you remember of the appearance there at any time of the Mexicans, Concepcion Elias and Antonio Gonzales?

A. Yes, sir.

Q. Will you state the circumstances under which they appeared there and what occurred? State all that happened when they came.

A. When they came there they went out to what they believed to be the centre initial monument of the San Pedro grant.

Q. Who was there at that time?

A. Dug Snyder, myself, Mr. Roskruge, and the two Mexicans.

Q. What was done?

A. We went from the centre monument, as I believe it to be, down towards the ford—what they pointed out as being the old ford.
63 On the west-side bank, before we crossed the ford, we found the old monument.

Q. Of what?

A. Of the San Pedro River, which the expediente of the San Pedro grant called for. We crossed the river, and there is some small hills on the east side of the San Pedro River from the valley, and from there we went to a rocky hill where we found a monument of stones. From there the Mexicans took us up to what is called the Bachata Cañon.

Q. Do you know whether any request was made of those Mexicans to find the Bachata Cañon?

A. We just asked them to show it to us, and they took us right to it without any questions at all.

Q. What did you find there after you were told that was the Bachata Cañon?

A. I and Mr. Roskruge rode ahead and we were down in the cañon; it is not a very deep cañon; it is more of a gulch, and we rode up on the south bank a little ways and we found a monument.

Q. Before or after it was pointed out to you?

A. After it was pointed out to us by the Mexicans—the cañon was pointed out to us. They were only about fifteen or twenty feet below us.

Q. Describe the Bachata monument.

A. It was a very large monument. Of course it wasn't as high as when it was new; it was all toppled over, but the base of it was put up there very nicely, and looked like it was well put up when it was first put up there.

Cross-examination by Mr. REYNOLDS:

Q. Where did you meet those two Mexicans?

A. Down in Sonora.

Q. How did you happen to meet them?

A. I went after them.

Q. How far did you go to get them?

A. Thirty miles.

Q. Where were they?

A. Down at Santa Cruz.

Q. That is where you found them?

A. Yes, sir.

Q. How did you happen to know that they knew anything about it?

A. Because we were around about there—Bachata Cañon—and Mr. Green told me he thought it was the Bachata Cañon, but wouldn't be sure about it; and I tried to find men that knew the Bachata Cañon, and they told me at San Pedro I might find some at Santa Cruz, as there were old men there that used to be on the ranch, living there;
64 and I went after them and I found these two men that could show us where Bachata Cañon was. They told us they knew where it was exactly.

Q. And you brought them up?

A. Yes, sir.

Q. Both of them?

A. Yes, sir.

Q. And took them back?

A. No, sir; they went back themselves.

Q. And you located that as the centre monument of the San Pedro ranch?

A. They didn't know any other monument. They told us as Dug Snyder just testified to the same thing.

Q. Did they locate it or did you?

A. Dug Snyder didn't testify to that; no.

Q. All you were wanting to find was Bachata Cañon?

A. Not exactly; no. We wanted to find it because we went down trying to establish the San Pedro grant.

Q. And you were going to find it by finding the Bachata Cañon?

A. No, sir; not at all. Of course, the Bachata Cañon was one of the main points. That was a natural object—a natural monument.

Q. (Showing witness Exhibit "13.") Where is that monument?

A. I think that is the centre monument, if I am not mistaken.

Q. Centre monument of what?

A. Of the San Pedro grant; one way of it. I would not be sure about it. It may be the Bachata. I don't know. I haven't seen these pictures only once before.

Q. Is that monument in Mexico or in the United States?

A. In the United States.

Q. How far inside?

A. Well, I couldn't tell you exactly the distance, but I should call it maybe half a mile or a mile, or perhaps more, because the line is supposed to run in kind of a diagonal way in that part of the country. The United States monument is diagonally across, as Snyder just testified to; supposed to be the old international monument.

By Mr. HERRING. We will state to the court that we have had a return to our subpœna issued to the marshal for Concepcion Elias and Antonio Gonzales, and the return is that the parties can not be found. Now, we will call upon the other side, if they have any knowledge of the whereabouts of these gentlemen, to disclose it.

By Mr. REYNOLDS. They were stopping at the Palace Hotel yesterday, and we think they can be found there yet.

By Mr. HERRING. That exhausts our witnesses for the day, and, with the exception of the exhibits, which we shall offer at the close of the case, that concludes the case of the claimants.

By Mr. REYNOLDS. What exhibits?

By Mr. HERRING. I speak of filing papers.

65 CHRISTOPHER LAYTON, a witness called and sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. BARNES:

Q. What is your name?

A. Christopher Layton.

Q. When did you first, if ever, come into the valley of the San Pedro, in what is now Cochise County?

A. Well, I came in in 1846 first.

Q. How large an expedition were you a member of at the time you came in first?

A. Five hundred men, independent of officers.

Q. What route did you take to come into the valley of the San Pedro?

A. We came in to the San Bernardino ranch.

Q. How with reference to the Mule Mountains?

A. I don't know the name of the mountains.

Q. You came through the San Bernardino Pass?

A. Yes, sir.

Q. You know the country. Now, about where did you come into the valley? Do you know where Hereford now is, or the buildings there?

(Objected to as suggestive.)

A. No; we come in quite a piece above Contention.

Q. About how far above where Contention now is?

A. I should think, sir, about a mile or two; probably three. I couldn't tell exactly, it is so long ago.

Q. What course did you take up the valley after you came to the river?

A. We went down the valley.

Q. Where did you leave the valley?

A. We must have left the valley, to the best of my recollection, about two miles below where the—this other stream is.

Q. The Babacemari stream, you mean?

A. Yes, sir.

Q. How wide a country did your expedition cover in marching through the country?

A. At times when we camped it covered considerable—went pretty wide. Sometimes our mules would scatter two or three miles.

Q. Was there anybody living in the San Pedro Valley, as far as you could see?

A. There was not.

Q. No persons living there at all?

A. Never seen anything nor no signs of anything.

(No cross-examination.)

66 P. C. MERRILL, a witness called and sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. BARNES:

Q. When did you first come into the San Pedro valley?

A. In December, 1846.

Q. Since then have you become familiar with the valley from Benson up to the international line?

A. Yes, sir.

Q. About where did you strike the valley? How high up could you see that valley when you first came in there?

A. Well, of course we had no names to go by. The peculiar circumstances of our coming onto the river was meeting wild cattle and having trouble with them in our camp—sending out hunters to get beef. They came into our camp and wounded eight of our men and killed several of our mules.

Q. The cattle did?

A. Yes, sir. That was what was termed by us "our heavy bull fight." That was, as I ascertained, in coming back after locating the country that I had come into. Being second in command, adjutant of bat'al/ion and quartermaster also, I became pretty familiar with all the country traveled over. I found when I came back here in my exploration to find a location to settle upon—to colonize—I traversed from the Santa Rita Mountains along the Huachucas (interrupted).

Q. Confining the question to your first visit in the valley, did you find anybody living there?

A. No, sir.

Q. When did you come back again after that?

A. In the year 1877.

Q. What exploration of the valley did you make then?

A. As I was telling you, we made a halt at the Huachuca Mountains—Thomas Gardner's ranch—and I took two men with myself to explore to find a location to locate our families. I found a company of United States soldiers and officers at what is now called Huachuca fort. From there I kept on to the south, or near the south end of the Huachuca Mountains—we learned the names then—and came to a monument between the two Republics, which was very prominent at that that time—easily discovered—and from the information that I had received from Gen. Wasson concerning looking for a location, as I didn't wish to get onto a grant or any Indian reservation, I was very pointed in those matters. After his giving me the best instruction that he had he said, so far as he could ascertain (interrupted).

By Mr. HERRING: We can not permit this.

Q. Well, did you go down the valley?

A. Yes, sir; after I struck the monument I turned around then and went down the valley.

67 Q. How far did you go down at that time?

A. As far as Tres Alamos.

Q. How far from the boundary line?

A. I think forty miles, about.

Q. Was anybody settling there claiming to live on a grant?

A. No, sir.

Q. Nobody there?
A. No, sir.

Cross-examination by Mr. HERRING:

Q. Did you ask anybody there if they were living on a grant?
A. I could not see anybody to ask.
Q. Did you travel in the nighttime?
A. No, sir; I met a man by the name of Landers coming up from Tres Alamos.
Q. He was settled there on the San Pedro?
A. He was going up to make a location, he said.
Q. Did he have a lot of seeds and trees in his wagon?
A. I couldn't tell you that.
Q. Was he driving a wagon?
A. I saw him at Ornesorgen's, right close to Benson.
Q. Settled there?
A. Yes, sir.
Q. Somewhere near your people on the San Pedro?
A. No; several miles.
Q. He made a ditch, didn't he?
A. There was kind of a wash come out—yes—and he made a ditch from that.
Q. Well, he was one settler you found there?
A. He wasn't an actual settler then any more than I was.
Q. He was there in 1877?
A. Yes, sir.
Q. When you were down along the Huachucas, did you travel along that mountain road from Huachuca post down to the end of the mountains?
A. There was no road there, sir.
Q. You didn't find any road?
A. No, sir.
Q. Did you ever find a road there?
A. No, sir; not till after the settlers came in.
Q. Did you go down alongside of the mountains?
A. I did.
Q. And when you returned, did you return the same way?
A. No, sir; I went down the river; along the banks of the river.
Q. That was in 1877?
A. Yes, sir; 1877.
Q. And you saw no settlers there?
A. No settler except Landers, and he wasn't on the ground that he located afterwards. I saw him at Ohrnersogen's crossing.
68 Q. Who was with you at the time you were prospecting around there?
A. Orrin Merrill was one, my son, Thomas Merrill, and a man named Williams, now dead, and Dudley Merrill, too.
Q. That was in 1877?
A. Yes, sir.
Q. Do you know John H. Slaughter?
A. I knew the man when he was sheriff of Cochise County.
Q. You stopped at his house on the San Pedro?

A. I did not. I didn't see it in my first exploration. I saw it afterwards.

Q. Do you say that place wasn't there in 1877?

A. I don't recollect of any house being there that year.

Q. Are you able to say, from the exploration you made, that that place was not there?

A. I don't remember of being any house on the San Pedro.

Q. That is not what I asked you. I am asking you whether you are able to say.

A. To the best of my recollection there was no house there.

Q. Did you stop at Mr. Blair's place?

A. That wasn't there till after we located.

Q. Did you stop at Mr. Clanton's place?

A. It wasn't there till after we located.

Q. Or the Boston mill—had that started when you went there?

A. No, sir.

Q. A flume was taken out there?

A. My company took out that flume.

Q. For the Boston mill people?

A. Yes, sir; under contract.

Q. Did you ever know Mr. Tanner and Mr. Hayes in that valley?

A. They settled there after we came in—on the Babacomari.

Q. Were they not on the San Pedro when you came in?

A. Not when we came in.

Q. Do you say they were not there?

A. I don't say but what they might have been there, but I didn't see them.

Q. What marked peculiarity did you find in your travel from that stream along the San Pedro between the boundary line and Charleston?

A. I couldn't see any.

Q. Did you find any marked peculiarity; do you remember of any?

A. Only that I thought it wasn't a location for me to settle on with a colony. It was cañons, a good portion of it. Up where now they call Ochoa there might have been a small amount of water, but not sufficient for me to raise anything there.

Q. The water of the river?

A. Yes, sir; in the fall of the year it was. The water in the river was merely nothing; only standing in pools.

Q. Nothing near Ochoaville?

A. Nothing that was interesting to me to locate a colony.

69 Q. After you passed a point 6 or 8 miles north of Ochoaville and passed on, did you find anything else remarkable along that river?

A. Nothing; only rocky hills, with gorges for the river to go through.

Q. You did not find the great Lewis Spring pouring out its waters as if from a barrel?

A. I wasn't on that side.

Q. And from Ash Cañon, where there is a large accumulation of fresh water running down?

A. I saw that spring; we called it Fish Spring. We didn't consider it any place to pick a location.

Q. You didn't find the Crystal Springs, with their enormous supply of water?

A. I call that Crystal Spring.

Q. Which one?

A. The west side of the river.

Q. And the Ash Cañon spring?

A. I don't know but what they are all one.

Q. So far as you know, they are all one?

A. Yes, sir.

Q. You do not know that they are twelve miles apart?

A. No, sir; I do not.

Q. You were along that river and saw what was there?

A. I was along that river, but the nature of the country was such that I didn't want to make a location there, and so I was not particularly interested.

H. O. FLIPPER, a witness called and sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. REYNOLDS:

Q. What is your business?

A. Civil engineer.

Q. What is your present employment?

A. Special agent Department of Justice, assigned to duty with the United States attorney for the Court of Private Land Claims.

Q. How long have you been an engineer?

A. Since 1877, when I graduated at West Point.

Q. I will get you to state whether or not you are familiar with the Spanish language.

A. I am.

Q. Have you had any experience in surveying Spanish or Mexican grants?

A. I have had eleven years' experience surveying such grants in Mexico.

Q. And have you had any experience in examining archives and records of those grants?

A. I have.

70 Q. I will get you to state whether or not you have had occasion to examine documents in relation to this grant on trial recently in Hermosillo.

A. I have; on the sixth of this month.

Q. I will get you to state what documents you found and with reference to the condition of those documents.

A. What purports to be the matrix of this grant is on file in the archives at Hermosillo, and begins with the application of Ignacio Elias and Eulalia Elias, dated March 12, 1827, signed by them.

Q. What is the appearance of the document with reference to change?

A. The word Ygnacio Elias—"Ygnacio" is erased by lines drawn through it and the word "Rafael" written. The words "Y Doña Eulalia Elias" erased by lines through them. Further down the words "en corsorsio con D. Rafael Elias, Capitan Don Ygnacio Elias y D. Nepomu-

ceno Felix" are eraced by lines drawn through them. At the end of this application the word "Rafael" has been written on top of the word "Ygnacio" and "Eulalia Elias" has been erased. It is a copy; not the original. It is at the beginning of the matrix.

Q. The petition for the grant?

A. Yes, sir.

Q. Are there any other erasures in the instrument anywhere?

A. No, sir. The usual statement that occurs in these papers in regard to the application is omitted in this one, but there is an appointment of an alcalde to make the survey. It is signed by Gajiola. It is not the signature of him and does not pretend to be.

Q. What is it?

A. It is a copy, and is not spelled as he spells it.

Q. Did you examine what is known to be his genuine signature?

A. Yes, sir; very closely; and this does not pretend to be his signature. It is a copy.

Q. Are there any other peculiarities?

A. The application, act of obedience, appointment of assistants, and examination of ground, survey and appraisement, the pregones, the order to prove capacity, etc., the declaration of three witnesses, and act of conclusion and notification of Elias and transfer are all in the same handwriting. The signatures to the application are in the same handwriting, and the handwriting is the same as the body of those writings. The pregones are all set out in full and signed by Elias; one is also signed by Rafael Elias.

Q. Any further peculiarities about it?

A. The three almonedas are signed by the treasurer-general, Gaxiola, but are not signed by the attorney-general, Manuel Brena.

Q. Do you find any copy of the grant attached to it?

A. No, sir; before we get to that *in* the certificate of payment of $240; that is the exact amount at which the land was appraised, and there is nothing said there about the usual fees that are charged—
71 nothing whatever. There is attached to this matrix a copy of that communication which was read this morning in the Babacomari case, that the State government had consulted the congress of the supreme government and reply was awaited before title would be issued. I find an endorsement on the 25th of December, 1832, that title had been issued. There is also a toma de razon in the proper book.

Q. Is that by Ignacio Elias?

A. It says issued to Rafael Elias Gonzales.

Q. Did you have that document offered in evidence here, the titulo, with you?

A. I did not, sir; it wasn't here.

Q. Have you had occasion to examine the monument referred to by these gentlemen just on the stand a few moments ago, known as the international boundary line monument?

A. The large monument described by Mr. Roskruge?

Q. Yes, sir.

A. I have, very thoroughly.

Q. Can you give us a history of that monument?

A. Yes, sir; that was built by the American boundary commission in 1853 or 1854.

Q. The monument that Mr. Roskruge describes as the north centre monument of the San Pedro?

A. When the Mexican commission arrived there they were not able to find that monument, and (interrupted)

(Objected to because there is no foundation for this testimony, and it is immaterial.)

By the WITNESS. I know it is built there because it is so marked; it was so marked when I was there in 1885, as a United States boundary monument; there is no question about what it is.

Q. What book is that you hold in your hand?

A. The report of Major Emory, who made that survey, and I have a copy of it there and had it there in 1885 when I run that line. The history of it is that the American commission got there and built the monument as on the line; the Mexican commission were not able to find it on account of the high sacaton grass there, and they built a monument about a quarter of a mile west of this monument, which is the monument accepted to-day. I have run the line and know where both are, and when I was there in 1885 they had the inscription here in this book.

By Mr. REYNOLDS. I now offer the book referred to by the witness in evidence. Shall I read it?

By the COURT. Not now.

By Mr. HERRING. We wish to cross-examine the witness upon these statements.

Q. Have you had occasion to investigate this grant on the ground?

A. I did.

Q. What did you do?

A. I had a copy of this titulo and this map.

72 Q. Well, tell us what you did and what you found.

A. I went down there and found the north centre monument, which is a cottonwood post about 3 feet high and 4 x 5 inches square, set in a small pile of limestone on top of a small hill. From that monument I went south down the valley, hunting for the centre monument all the way down to Ochoaville, and wasn't able to find it, for the mounment was in no place I could identify as being the place described in the expediente. I then went to the place marked on this map as the south centre monument of the San Rafael del Valle grant and looked for the monument, but could not find it. I went all over that field described there and couldn't find the monument or anything resembling it. Then I went to the southwest corner, and I had a man from Mr. Green's ranch—and there is a fence built there—and he said the monument is supposed to be where the fence is; but no monument is there now or anywhere in the vicinity. We went across to the southeast corner, and was unable to find anything there at all. We ran out the distance from the corner of that fence—the full distance of that south line—and found nothing.

Q. You run the line as Roskruge ran it?

A. Yes, sir; as laid down on that map. We then came back to the north centre monument, on the little limy hill, and went west to the northwest corner. We found there a stake exactly like the one in the pile of stones on top of this hill. That I knew to be the Wasson survey monument. The one described on this map is different. We searched

north and south and east and west of it, and found nothing whatever. We went to the northwest corner—northeast corner, rather—and found the Wasson stake. It had fallen down; and in a similar way we hunted for the northeast corner of this survey, and we were not able to find anything.

Q. Did you ever have occasion to investigate that valley, with reference to small hills, down below the present location of the San Pedro ranch?

A. Yes, sir. At the place where the north centre monument is placed the valley narrows in there, and this hill is on the east edge of the hills on the west side of the river. We followed the mesa all the way down in search of other such hills. The whole country is limestone formation, and some 5 or 6 miles south the mesa runs out into the valley again and forms two or three little hills there. The word hill in the original is "loma," and all of these are lomas. The word hill in English does not exactly translate the word loma.

Q. Now, south of the line, along the San Pedro, what did you find there?

A. There are similar hills on the south side of the international boundary. The centre point is described as being a little hill in the valley. There is no such hill in the valley anywhere—I mean in the valley between the mesas on both sides.

Q. Did you examine what they call the Bachata Cañon?

A. I did not. I did not examine the San Pedro grant all.

Q. Now, describe the Huachuca range of mountains down there.

A. The Huachuca Mountain lays generally west of the river;
73 probably 20 or 25 miles long, running a little north of west from where the boundary line crosses it. At the west end it is probably ten or fifteen miles wide.

Q. And the Mule Mountains?

A. They are on the opposite side of the river. They do not cross the boundary line.

Q. How far do they start from the boundary line?

A. Well, I don't know—3 or 4 or 5 miles. The foothills—low hills—run down to the line.

Q. Where is the Huachuca Mountain with reference to the boundary line?

A. The east end of the Huachuca crosses the line slightly. The line runs over a spur of the mountain.

Q. Do those mountains have a general tendency in the same direction as the river—up and down?

A. The Huachucas?

Q. Yes, sir.

A. No, sir; they run from the river.

Q. In other words, from the south towards the north they diverge towards the west?

A. Yes, sir.

Q. How does the river run?

A. It runs a little west of north.

Q. And the mountains diverge still further than that?

A. Yes, sir.

Q. From the southern end of the mountains they diverge towards the west?

A. Yes, sir.

Q. In going to what you call the north centre monument, are you able to locate that by any other means than the calls in this Roskruge survey and the Wasson survey?

A. No, sir; I had no other means of locating it. I had both maps—I had Wasson's map and Roskruge's map.

Q. Could you find any initial point, such as is called for in this expediente, by which any of the subpoints can be verified?

A. No, sir; I could not. I made special search for the initial point.

Q. Can you take any of the subpoints and work back from one to the other and verify the initial monument?

A. If we start at the north centre point and run out the distance for 400 cords it won't begin to reach the San Pedro, not even as Mr. Roskruge claims it.

Q. It will not?

A. It won't reach it by at least ten miles. I mean the San Pedro tract of land, not the San Pedro custom-house. It will not reach the north line of what is marked on that map as the San Pedro ranch.

Q. You do not mean that it won't reach it by ten miles?

A. Yes, sir; I mean just that. I did not measure that distance, but I estimated it, and it would not reach it by ten miles.

Q. From where—run out the distance from where; from the north centre monument?

74 A. The four Mexican leagues to the end of that line would be ten miles from that north line.

Q. Which north line—of the San Pedro as laid down?

A. The north line of what is marked on this map as the San Pedro ranch.

Q. Then, commencing at the north centre monument and take that as the north line of the four leagues, and take the width as they measured them, so as to lay it out in a rectangle, and you say the four leagues will not reach that by about ten miles?

A. By about ten miles; yes, sir.

Q. Then if you go down and take the north line of the San Pedro ranch or grant, as laid down on the Roskruge map, and run what is to make four leagues north, it won't carry you to the north centre monument?

A. No, sir; it won't carry you to this north centre monument.

Q. In other words, you can not take this expediente and go and locate the initial point and protract a survey and survey this grant?

A. No, sir; you can not.

Cross-examination by Mr. HERRING:

Q. You say "we" did so and so. Whom do you mean by "we?"

A. In what case did I use that term?

Q. When speaking of your being on this San Rafael del Valle grant, "we found a monument."

A. I meant myself and the men accompanying me—Mr. Burnet, Mr. Haviland.

Q. Mr. Barnet, one of the divers parties to this grant?

A. I don't know, but I suppose he is. He never told me so.
Q. He never has told you that?
A. No, sir; I haven't any means of knowing.
Q. James Burnet, the gentleman who is engaged in business in the Huachuca Mountains now, never has told you that he is adverse to this grant, eh?
A. He has told me that his wife has a piece of land in what is called the San Rafael grant, and she is adverse to the grant and he is representing her.
Q. You may argue yourself out of it if you want to, sir.
A. Well, that is what he told me. He has never told me he is an adverse claimant.
Q. He is of angelic tendency towards this grant, is he?
A. He never has told me about that.
Q. And how about Mr. Haviland?
A. He is living on the ranch.
Q. And is he adverse?
A. I don't know; he never told me so. You have been down on that river and met the people down there and they are working the grant, I believe.
Q. You never learned from him that he is adverse to this grant?
75 A. He never told me.
Q. Or Mrs. Haviland?
A. I never saw her.
Q. You took those two gentlemen, and they constitute the "we" that made this hunt?
A. They were with me; yes, sir.
Q. And you were hunting for monuments?
A. Yes, sir.
Q. Where did you go first?
A. Went to what is called the north centre monument.
Q. Had you ever been there before?
A. No, sir; I had not.
Q. When was it you were there?
A. On the 18th of this month.
Q. What time in the day was it that you got there?
A. About noon.
Q. Were you afoot or on horseback?
A. In a carriage. We got out of the carriage and went up to the monument.
Q. And there you saw a stake?
A. Yes, sir.
Q. That was Allis's monument?
A. Yes, sir.
Q. After finding that, did you look for any other monument right there?
A. At that particular place?
Q. Yes, sir.
A. No, sir; I did not.
Q. Look for any other monument north of it immediately?
A. I looked all over that hill and didn't see any other.
Q. Did you look for any other monument immediately north of it?

A. No, sir.

Q. Did you look for any other monument immediately south of it?

A. No, sir.

Q. Did you look for any other monument immediately east or west of it?

A. No, sir; but, standing on that hill, you can see all over the surrounding country.

Q. Did you have any glass there?

A. I didn't need any. I have eyes.

Q. Is your eyesight good?

A. Yes, sir.

Q. Very good?

A. Yes, sir.

Q. Could you see the surrounding country?

A. Yes, sir.

Q. And could see whether there was a monument in the vicinity?

A. Yes, sir; in the immediate vicinity.

Q. You could?

76 A. I don't suppose you mean a mile by "immediate vicinity." The corner monuments are only a mile and a quarter from that one.

Q. Well, what do you mean by "immediate vicinity?"

A. 50 or 60 yards.

Q. And you did not see any monument within that radius?

A. I did not.

Q. Your search did not extend beyond that?

A. Except when I traveled to the northeast and northwest corners.

Q. Did you find any monument at the northeast corner?

A. I say I went from the northeast centre monument, that we speak of as the northeast corner, and also the northwest, and I found no monument in the interval.

Q. Did you find any monument at the northeast corner?

A. You asked me if I found any monument in the immediate vicinity of [interrupted].

Q. Now I have asked you another question: Did you find any monument at the northeast corner?

A. No, sir; I did not; not as represented on that map. I did find the Allis stake.

Q. Did you look around?

A. Yes, sir.

Q. How far around—60 or 70 yards?

A. Yes, sir.

Q. Did you look any further than that?

A. No, sir; I did not think it necessary. It is on a mesa, and you can see quite a distance.

Q. Were the two gentlemen with you at the northeast corner?

A. Yes, sir; and two others were there—Mr. Herrick and another. I don't know his name.

Q. Were you afoot or horseback?

A. We were in a carriage.

Q. Did you find Allis's monument there?

A. Yes, sir.

Q. Did you have any instrument?

A. No, sir.

Q. Any tape or chain?

A. I did not make any measurement; no, sir.

Q. As a basis of all you have testified to here in relation to measurements and quantities on this grant you made no accurate measurements?

A. I haven't said a word about measurements or quantities. Don't put words in my mouth, Col. Herring.

Q. You made no measurements?

A. I didn't make any measurements whatsoever.

Q. When you say that grant, if continued from the north boundary as fixed by Roskruge on his map, if continued southerly with the quantity called for in the expediente, it would not extend to the San Pedro grant or within ten miles of the San Pedro grant, you mean by your guess, do you?

77 A. I took particular pains to say that I estimated that distance, Colonel.

Q. It is a guess, is it?

A. No, sir; it is not; it is an estimation.

Q. What do you base that estimation on?

A. I am a surveyor for 17 years and am in the habit of estimating distances.

Q. You base it on that fact?

A. Yes, sir.

Q. Any other fact?

A. I have traveled over the ground and have surveyed, and, being a surveyor and having traveled that distance twice, I estimated the distance.

Q. Even then, upon that it is a pure guess?

A. No, sir; it is not; it is an estimate based on experience.

Q. You estimate it is about 25 miles from the north centre monument to the line?

A. Do you know what four square leagues are, sir?

Q. When I am under cross-examination by you I will give you an opportunity to exhaust yourself. As a surveyor, Mr. Flipper, from your standpoint as a surveyor and your education and experience as a surveyor and civil engineer, which would you think more likely to be accurate, the measurement made by a man who has had large experience or your guess or estimate?

A. I should think my guess or estimate better than any measurement made by an incompetent man, such a man as made the survey.

Q. You pass on him as incompetent, do you?

A. Thoroughly and absolutely incompetent in every way; no knowledge of mathematics or of surveying

Q. Did you ever examine him in mathematics?

A. No, sir; I know from his work. I have tested lots of his work—lots and lots of it.

Q. But you never have examined him?

A. I have heard him tell the way he learned surveying. I have heard him say that he never studied trigonometry. It is not necessary to examine him and it is not necessary to examine you to know that you are a personal enemy of mine; no sir.

Q. Is that another guess of yours?

A. I have information—witnesses to prove it, if you wish it.

Q. That is another case entirely, and we will pass by the personal enemy question. You have no other knowledge of this fact, of the invalidity of this grant being extended to the San Pedro and containing this quantity of four leagues, other than your estimate?

A. No, sir; I haven't measured it.

Q. Upon what width of grant was that estimate based?

A. On four Mexican leagues.

Q. You mean a side of four leagues? Was it based upon the side or the square root or area of four square leagues?

A. I am not talking about square leagues; I said four leagues. A league is a linear distance.

78 Q. I asked you if it was based on the side of a piece of land that would constitute four leagues?

A. It was not.

Q. Upon what width of ground do you base this extension of the grant?

A. That is four linear leagues in length.

Q. Measured by whom?

A. So described in this expediente; I don't remember who the surveyor was. He started and measured south two leagues and measured north two leagues more.

Q. Measured four leagues from that northern boundary (interrupted)——

A. Up the river?

Q. Yes, sir; measuring four Mexican leagues in the direction of the San Pedro boundary, as testified to here to-day.

A. Yes, sir.

Q. And you undertake to say that the southern boundary of such a grant—four-league grant—would not come within ten miles of the San Pedro boundary?

A. That is my estimate; I do say that absolutely; that I estimate the end of that line would not reach the north line of the San Pedro by about ten miles.

Q. Do you know whether the San Rafael del Valle grant, as marked on this map, extends southerly from the point called Hereford or not?

A. It is not. Hereford is still further south than the south line.

Q. Of the grant?

A. Yes, sir.

Q. Then the north line of the San Pedro grant is north of Hereford?

A. Yes, sir.

Q. At what point on the San Pedro did you find the north monument of Allis? Describe the land. What was there in the vicinity of that north monument?

A. The valley of the river there narrows down considerably, and on the west side there is a series of lomas—a good many of them—and among them is one sharp peak or cone and on this cone was the Allis monument. On the opposite side of the river some hills were there.

Q. Was there any house or any structure of any kind in the vicinity of that north monument?

A. Not near to it.

Q. What is the first structure of any kind that you come to north of it?

A. The first I know anything of is where Haviland lives, a mile or a mile and a half from there. I don't think it is visible from that monument.

Q. Near Charleston?

A. It is between this monument and Old Charleston; it is nearer the monument than Old Charleston.

Q. How many miles in four leagues?

79 A. In four Mexican leagues, ten miles and four-tenths English miles.

Q. And when speaking of a ten-mile interval beween the southern end of this grant and San Pedro you are again speaking of English miles?

A. Yes, sir.

Q. Do you know the distance from Haviland's to the boundary line?

A. Not exact, but I have estimated it.

Q. What is your estimate of that distance?

A. I estimate between twenty and twenty-five miles; nearer twenty-five than twenty.

Q. What is the distance from the southerly boundary line to Roberts' place?

A. I don't know Roberts' place.

Q. Didn't you see the place?

A. I may have seen it, but I don't know the man.

Q. What is the distance from the southerly boundary line to Hoeffler's?

A. Southern boundary line of this grant"

Q. No; of Arizona, to Hoeffloer's place.

A. That I don't know.

Q. Do you know Hoeffler's place?

A. Yes, sir.

Q. What is your estimate of the distance between the southern boundary of Arizona and that place?

A. I should say three or three and a half miles. You mean the international boundary line?

Q. Yes, sir; that is what I mean.

A. I should say three or three and a half miles.

Q. Suppose you should learn that that was nine miles, would you not think that your estimate was away out?

A. If I was convinced it was, I would.

Q. And how if you should learn that it was six miles?

A. If I should learn it to be anything but three and a half miles I should think I was incorrect.

Q. Then your estimate would be away out?

A. Yes, sir. I didn't measure it; I rode over it.

Q. And that would affect your estimate generally of the distances there, would it not?

A. It would depend upon the care with which the estimate was made.

Q. Did you make any one of these estimates with any more care than another?

A. Not in that particular instance; no, sir.

Q. You made them all with the same kind of care?

A. All these in this case; yes, sir.

Q. When did you first make this estimate that the southern end of the San Rafael del Valle grant was not within ten miles of the San Pedro there?

80 A. The day I rode over it. We rode over it twice—down and back.

Q. You were riding in a carriage?

A. Yes, sir; in an open carriage, or buggy.

Q. Riding along that road by the San Pedro River?

A. Yes, sir; hunting for the centre monument there.

Q. Did you base your estimate of the distance on the speed of your team at all?

A. No; we went along slowly, hunting for the place.

Q. Walked your horses?

A. Yes, sir.

Q. Can you judge of how fast those horses could walk?

A. I have ridden one many years in the cavalry service.

Q. Was this a cavalry horse you had to this wagon?

A. I don't know whether he was or not.

Q. You were estimating the distance by the distance the horses could go?

A. Yes, sir.

Q. And how fast did you travel?

A. About two or two and a half miles an hour.

Q. At noon you were at the northern end of this grant. At what time did you get to the southern end of it?

A. Along near sundown.

Q. Between four and five hours? How many hours intervened between the time you were at the northern end and when you got to the southern?

A. Four or five hours.

Q. As many as five hours?

A. I haven't any recollection of those things. I didn't keep any record of them.

Q. What is your best recollection of it?

A. I haven't any recollection of it.

Q. Then you did not make your estimate with respect to the time it took you to travel that distance at all?

A. As we rode up the river we estimated the distance and made a note of it, and when we came back we made another estimate of it.

Q. When you say "we made an estimate" do you mean you stopped and had a consultation how far it was?

A. No, sir; we were not so silly.

Q. What do you mean, then?

A. When we got to the end of the route we spoke of the distance.

Q. Who is "we?"

A. The people with me.

Q. Who was with you at the time this happened?

A. Mr. Burnet and Mr. Haviland.

Q. Did you all agree right there as to the distance?

A. That I haven't any remembrance of.

Q. Did you say right there, you and Burnet and Haviland, that his grant didn't come within ten miles of the San Pedro boundary?

81 A. We spoke of the distance, and we all agreed it was about ten miles it lacked of reaching the line.

Q. Of reaching the San Pedro line?

A. No; we agreed that this survey of Roskruge's—this goes to the San Pedro line.

Q. Oh, it does?

A. Don't it show it going to the line? I say if the four leagues in the expediente were run out it would not reach that line by ten miles.

Q. You do not mean to be understood as saying that this map of Roskruge's, which he says goes to the San Pedro—you do not mean to say that is not so?

A. I do not mean to say that map does not go to the San Pedro. I say if the four leagues were run out from the north centre down they would not reach the north line of the San Pedro by about ten miles.

Q. And this on your mere estimate?

A. That is on my estimate; yes, sir.

Q. Did the people who were with you—Burnet, Haviland, and Herrick, and the other unknown or unnamed man—did they have any idea how long four leagues were?

A. That question did not come up. This question of four leagues is just brought up now. We did not undertake to estimate that, but we estimated the distance from that point down to the San Pedro line. That question just come up now.

Q. Did not come up that day?

A. I have already told you what we estimated.

Q. The question of four leagues did not come up that day?

A. Not till just now.

Q. Then Burnet did not discuss the four leagues?

A. No, sir; nor you or I or anybody else on that day; that wasn't the discussion at all.

Q. What was it you were discussing?

A. We estimated the distance from that monument to the San Pedro line from twenty to twenty-five miles. I have told you that two or three times already. Now, if that distance is twenty miles and the grant four leagues long, which is ten miles, that will leave ten miles between the lines.

Q. How far is the north end of that grant, as you found the boundary, from the Haviland house?

A. I don't know how far it is; probably a mile or a mile and a half, or maybe two miles.

Q. Did you estimate it on that day?

A. Had no occasion to, because it cuts no figure in this case.

Q. Can you estimate it now?

A. I did not pay any attention to that distance. It was not important to pay any attention to it.

Q. Now recall the situation that you were in on that day as near as you can and state, in your best judgment, how far north of the boundary of that grant is Mr. Haviland's house.

82 A. I haven't the remotest idea; I paid no attention to it. It cut no figure in the case.

Q. I suppose it cuts a figure in the estimate of the distance from the north end of that grant to the Haviland house?

A. I am not in the habit of estimating distances when it is of no importance.

Q. Can you estimate how far the north end of that grant is from the old town of Charleston?

A. I never estimated it. I haven't anything to base an estimate on because I paid no attention to the distance I drove over.

Q. But you did form one conclusion?

A. That was the distance from that monument down. That is precisely what I went there for.

Q. You went there for the purpose of showing that that grant was not a grant, didn't you?

A. No, sir.

Q. Was not that one of your purposes?

A. No, sir; I went there for the purpose of seeing whether the survey was correct and whether it agreed with the expediente.

Q. Do you want the court to understand that you as a surveyor would take a map and go on a piece of ground without instruments or tape to prepare yourself as a witness and come into court and say whether a survey was correct or not and give sworn testimony in regard to it?

A. I mean to say that without any instruments whatsoever I can form an opinion whether those are the monuments described in there and whether those are the courses and distances or not.

Q. That was not my question. That is all for you, sir.

Recess until 9.30 o'clock to-morrow.

THURSDAY, *March 29, 1894—9.30 o'clock a. m.*

Appearances as before.

H. O. FLIPPER recalled to the stand.

Cross-examination resumed.

By Mr. HERRING:

Q. Mr. Flipper, describe the markings that you referred to as having been upon the boundary monument, the large monument which you described.

A. The marks there in 1885?

Q. Within what is claimed to be the boundaries of the San Pedro grant by the claimants.

A. I do not know what monument you refer to.

Q. You yesterday described a monument, a large monument which you went to in your investigations, as you made them, on the day that you went from the northern boundary of this grant south to the boundary line.

A. I did not describe any large monument on the grant.

Q. On what grant?

A. I described a monument which I said was the United States boundary monument. I testified that I found no monument but this, except three stakes.

Q. But you testified you found a large monument—boundary monument.

A. United States boundary monument?

Q. Yes, sir.

A. Not on this trip.

Q. You did not find it on this trip?
A. No, sir; I distinctly said in 1885.
Q. And that monument, you say, had markings upon it at that
A. Yes, sir.
Q. Now, I want you to describe those markings.
A. That monument which I described as being a United States b
ary monument had "W. H. E., U. S." on the north side. On the
side it had the initials of the Mexican commissioner. I don't reme
his name now.
Q. On which side of the river did you find that monument?
A. There are two monuments; the south one is on the east side
the north one on the west side of the river.
Q. Both boundary monuments?
A. Both built by the boundary commission.
Q. Were they both marked?
A. At that time; yes, sir; they were.
Q. As you have just described?
A. Yes, sir.
Q. In this recent visit you made all over that section of country
that section of country, you did not find any other large monumen
A. I did not go to these two, nor did I find any other; no, sir.

Redirect examination:

Q. In all your investigation and travel over the country of pr
land claims in Arizona, did you ever see a monument built of stone
mortar by the Mexican officials?
A. I have not; never; no, sir.
Q. All the monuments you have seen of that character, are th
modern or ancient date?
A. They are all modern date.

Recross-examination:

Q. What is the foundation for the assertion that a monument
modern date?
A. I don't know any more than anybody else, but my opinion is
were modern date. Many monuments are shown by the stones. W
it has been laying in the ground it is of different color from the
side, and many of them, from the fact that the under side
84 now, show that they are recent. It is an opinion I arriv
from having seen a great many of them and examined a
many of them.
Q. When you say modern, what is the limitation retrogressively
this time that you put upon that term?
A. Well, I should say within the last ten or fifteen years.

By Mr. REYNOLDS:

Q. Surely not prior to 1853?
A. Oh, no, sir; none whatever.

By Mr. REYNOLDS. I want to offer in evidence the expediente i
Boquillas case, for the purpose of showing the endorsement made in
by the treasurer-general. I believe it was as to the delivery o
expediente at that time and the reasons why he did not deliver the

papers. That is the only part of it I wish. Of course, the court may have the entire papers for whatever they are worth in the argument.

By Mr. HERRING. If it is in, we shall desire to avail ourselves of it for any and all purposes.

By Mr. REYNOLDS. Oh, yes.

By Mr. HERRING. We have no objection.

Government rests.

MAX MARKS recalled in behalf of the petitioner.

Direct examination by Mr. HERRING:

Q. Your attention was called yesterday to the photograph marked the initial monument of San Pedro grant?

A. Yes, sir.

Q. And you described that monument in your testimony?

A. Yes, sir.

Q. Were there any markings upon that monument?

A. No, sir; we examined it—Mr. Roskruge, Dug Snyder, Mr. Howard Herring, and myself—and didn't find no marks anywheres.

Cross-examination by Mr. REYNOLDS:

Q. Without looking at the backs of these photographs, indentify it and hand it to me.

A. Yes, sir [selecting photograph marked "Exhibit 9"].

Q. Was that built of stone and mortar?

A. No, sir; not that I know of. I don't think it was.

Q. Did you examine it to see if it was built of stone and mortar?

A. On the outside it didn't show any mortar, and Mr. Roskruge didn't allow us to remove any of the stones.

Q. Were they cut stones?

A. No, sir; they were not.

Q. Now, which side of the San Pedro River was this?

85 A. On the west side.

Q. How far from the international boundary line?

A. Well, what is always known as the international monument (interrupted).

Q. Don't you know where that monument is?

A. Yes, sir.

Q. Which direction?

A. Southeast side from this monument. It is across the river.

Q. What direction from the monument known as the international boundary monument?

A. Right at the present I do not know, for I haven't been there for some time.

Q. You were there a year or two ago?

A. Yes, sir.

Q. Were you not there when Mr. Roskruge made the survey?

A. Yes, sir.

Q. And you located this as the south centre monument of the San Rafael del Valle?

A. No, sir; not this one. This is not the south centre monument of the San Rafael.

Q. It is the initial monument of the San Pedro?

A. Yes, sir; as the Mexican told us—one of the monuments built there before the international monument was built, many years ago.

Q. It is the initial monument of the San Pedro grant?

A. They claimed that was the centre initial monument of the San Pedro grant.

Q. How far is this monument from the international boundary line?

A. Well, I should think perhaps half a mile.

Q. How far is it from the present international boundary line monument, the nearest one to it?

A. I couldn't tell you, Mr. Reynolds, because I have never been there since the new survey has been made of that line.

Q. Do you know when the last monument was put there?

A. No, sir; I haven't been there since 1891. We went from this monument across the country just as the expediente of the San Pedro grant read, and we found every place exactly as the expediente of the San Pedro read. We followed every direction and found exactly as the title read—the black thicket—and we found where the monument ought to be, between two peaks (interrupted).

Q. You did not find the monument?

A. The monument might have been destroyed.

Q. You found plenty of other things that could answer for a monument?

A. No, sir; only mining monuments further east from there.

Q. Were there not plenty of piles of stones that would answer for monuments, as you have been testifying to here?

A. Yes, sir—no, sir; we didn't (interrupted).

By Mr. HERRING:

Q. You did not?

86 A. No, sir; we did not see any that would answer to any monument in that country; no, sir.

Q. You mean you did not see any?

A. No, sir; I didn't see any.

DOUGLASS SNYDER recalled by petitioner.

Direct examination by Mr. HERRING:

Q. [Exhibiting photograph "9."] That is a photograph of the San Pedro initial monument?

A. Yes, sir.

Q. State whether you made any personal examination of that monument.

A. I did.

Q. Were there any markings upon any of the stones of that monument at that time?

A. No, sir; I made a very close examination of it, and if you will allow me to explain I will state why.

Q. State why, Mr. Snyder.

A. The day—but one before that, I think it was—I was over on the east side of the river and I examined the international boundary monument, and I made a memorandum in my book of the initials that were on the cut stones that were scattered around, and when we went to the other side I examined it very close to see if I could find anything to correspond. I looked very carefully and I couldn't find it. I do not say it isn't there, but I looked very close and couldn't find it.

By Mr. REYNOLDS:

Q. Did you find any sand or mortar?

A. No, sir.

Q. Did you ever find any monuments in that country—piles of stones—as large stones as those?

A. Those stones on the west side were not cut stones, but the stones in the boundary monument on the east side were cut.

Q. Answer the question I asked you. Did you find any stones in those piles of stones as large as those?

A. How do you mean?

Q. Anywhere else?

A. Well, yes; I think in the east side there is stones as large as those; but, mind you, they were not cut stones.

Q. Answer the question I ask you.

A. I want to answer you correctly, if I can understand you.

Q. I am not talking about the international boundary monument, but the wick-i-ups—the piles of stones. Did you ever find any as large stones in those mounds of stones called monuments in that country as you found in this one?

A. Let me explain.

Q. Answer yes or no.

87 A. Yes; I have. Now, let me explain it.

Q. You may do so.

A. Ordinarily men in building monuments will generally try to select two large stones for the base, maybe three, and then pile smaller stones on top to build it up. I know in locating mines myself I try to get big stones for the bottom and pile on it to make a solid foundation.

Q. Where did you ever find any monument of that same character in that same country?

A. I don't state that I found it in this country. I don't want you to understand it that way.

Q. Where in any particular locality did you find any monument built of that character of stones, except at that place?

A. Why, I am a mining man myself.

Q. I don't care if you are.

A. And I have probably built a hundred monuments, and I have relocated mines that were located.

Q. I am not asking you that.

A. Not in that country; no, sir; not there, I haven't, but I have found them in every mining camp mostly. Right there I hadn't anything to do with any other and had no occasion to know, but in mining camps generally I found them and can state.

Q. There is no mining camp right around there?

A. No, sir; none whatever. There is none nearer than Bisbee.

GEORGE J. ROSKRUGE recalled by petitioner.

Direct examination by Mr. HERRING:

Q. In the monument you described yesterday as the initial monument of the San Pedro grant, were there any cuttings or markings on any of the stones of that monument?

A. No, sir; I examined it all over very carefully and did not find any.
Q. Did you find any monument in this vicinity that had?
A. Yes, sir; I did.
Q. What monument?
A. International boundary monument.
Q. Did you see any—first, did you take any photograph of that?
A. I did.
Q. (Exhibiting photograph.) Is that the photograph you took?
A. Yes, sir; that is the photograph I took of the international boundary monument with Mr. Herring, sitting to the right, and Mr. Camou.

By Mr. "HERRING:"

Q. You mean my son, not me?
A. Yes, sir; your son. And there is stones to the left that you can see the initials; that is one stone marked and cut; you can see
88 that one [indicating] has been cut, and you can see initials cut in it. Several stones were well cut in with initials by men that well understood their business—in a workmanlike manner.
Q. When you reached this monument at that time was it thrown down as it now appears upon that photograph?
A. Yes, sir; exactly as I photographed it.
(Said photograph was thereupon offered in evidence and marked on its face "XX" as an exhibit.)
By Mr. HERRING: I desire to offer this blue print of the original Roskruge map as a substitute for the original and wish it marked.
(Said substituted map was marked "Exhibit 21.")
Q. Look at map, Exhibit 21, now shown you, and allowing four leagues from the northern boundary of the San Rafael del Valle, as shown upon this map, what is the distance from the point four leagues below the north boundary, as shown on this map, to the San Pedro ranch or grant, as shown upon this map?
A. 12,120 feet; a little over two miles and a quarter.
Q. That is the length of the grant?
A. Yes, sir.

By the COURT:

Q. I do not recollect whether you stated yesterday you measured the side lines of the grant.
A. No, sir; I did not measure the side lines. I want to explain to the court; in all this country, in mining claims, we measure one line and then follow the angles, because you never can close. I measure down the center and turn my angles, because if I had gone around I never would have closed. The surveys never close. Theoretically, when you figure it out they do, but practically they never do.

By Mr. HERRING:

Q. You did measure the center line?
A. Yes, sir.
Q. With what kind of a measure?

A. A 100-foot steel tape.

Q. Who was your assistant in measuring that line?

A. My assistants were Mr. Dug Snyder, Mr. John W. Taylor, and Ed. Woods.

Q. Have these men been associated with you before in measurements?

A. Yes, sir.

Q. Were they men of experience in these matters—of training?

A. Yes, sir; in fact, I measured a great deal of it myself. Understand, of course, I was on the end of the chain. I generally, if I can, do my own measurement—pack my own transit.

Q. Have you any plat or plan of any portion of the county of Cochise showing the Huachuca Mountains?

A. Yes, sir.

89 Q. By whom was that made?

A. Made by myself, sir.

Q. From what data did you make it?

A. The north end from connections with public surveys, and the south end from the international boundary line—Emory's report—and as shown there (referring to map) it is correct.

Q. You have also shown upon this section of Cochise County the San Rafael del Valle claim?

A. Yes, sir.

Q. Is it shown upon this as it appears upon the survey?

A. It is shown there as I took it from the public surveys, compiled in that map.

Q. How recently was this made?

A. That was made 7 or 8 years ago.

Q. It was not made for this case at all?

A. No, sir; nor in connection with it; it doesn't look like it, from the way it has been handled. I started to make this map some years ago for the county, and was going to include the eastern part of Cochise County, and instead of that I made the map already filed here. This was commenced 7 or 8 years ago.

Q. Can you take a blue print from this map showing the portion of Cochise County just testified about?

A. No, sir; it can be photographed and a blue print taken from that.

By Mr. HERRING. Counsel for claimant offers to put in a blue print from a photograph of this map and have this marked now as a provisional exhibit.

(There was no objection made, and the map referred to was marked for identification.)

Q. Are you able to state from this map or from any data in your possession the distance from Charleston, in Cochise County, to the international boundary line?

A. Yes, sir.

Q. Please state it.

A. It is between six and seven miles from the boundary line (interrupted).

Q. You do not understand my question. I want the distance from the town of Charleston as laid down on this map to the boundary line.

A. Yes, sir.

Q. I want to know whether you can show it.

A. Yes, sir; I can. I didn't hear you correctly.

Q. Do you withdraw the previous answer you have made?

A. Yes, sir. I didn't understand the question. I don't hear very well. (Scaling the map.) From the town of Charleston to the international boundary line—well, this is a straight line and that makes a big difference.

Q. What is the straight line?

A. Twenty and ½ miles.

90 Q. Now the meanderings of the road, about what would they vary it?

A. I can tell you by following the road, if you will allow me a moment. The road is continually changing.

Q. You speak of the road from Charleston down by the south or west bank of the San Pedro River?

A. Probably 24 miles.

By Mr. HERRING. There was a map of Cochise County submitted to this court yesterday. I did not understand that it was admitted. I intended to state at that time that the map is incorrect.

By Mr. REYNOLDS. It was only offered for certain things—to show the location of the mountains and the San Pedro River.

By Mr. HERRING:

Q. I will ask you to explain "provisional exhibit" to the court. You will observe that the courses of the mountains on the two maps vary considerably. Are you familiar with Emory's boundary survey?

A. Yes, sir.

Q. Is or not this map now offered in evidence as provisional exhibit in harmony with his survey?

A. Yes, sir.

By Mr. REYNOLDS:

Q. Did he survey anything but the international boundary line?

A. Major Emory?

Q. Yes.

A. Not that I am aware of.

Q. He did not survey Cochise County?

A. We have a plat on file in the surveyor-general's office.

Q. He did not survey the Mule Mountains or Cochise County, did he?

A. No, sir.

Q. Or the Huachucas?

A. He came across the south end of the Huachucas. They are called the Sierra de la Espanol.

Q. Did the name Huachucas originate since then?

A. No, sir; that couldn't be, because they are called the Huachucas in the old grants.

Q. Were they known as the Huachucas at the time he came through there?

A. They might not have been. I can't tell you; I wasn't there. I am only telling you from what I know in the old papers.

Q. Did he say anything about the bearing of Mule Mountains?

A. He did not touch them.

Q. Could he see them?

A. Yes, sir.

91 Q. Do you know whether he referred to them?

A. I don't know whether he did or not.

Q. He did not refer to them as the Mule Mountains?

A. I don't know whether he did or not.

Q. Who made that map (referring to map of Cochise County in evidence)?

A. Mr. Howe.

Q. He is a reasonably competent map——

A. Yes, sir; I believe he is; but I want to tell you that map is wrong. I don't propose to run another man down to help build up myself, like some parties do.

Q. Didn't you testify here the other day that the general course of the mountains as laid down on this map and the general courses were substantially correct?

A. Yes, sir; towards the northwest.

Q. They diverge from the river from the south towards the northwest?

A. Yes, sir.

Q. You have them nearly parallel, haven't you?

A. I have got them correct, sir.

Q. Is not the general course and direction of the Huachucas, as you have it on this map just introduced in evidence, substantially parallel with the river?

(Objected to as argumentative.)

By the COURT: Yes; the court can determine that from an inspection of the exhibit.

Q. When overhauling Mr. Emery's survey, did you hunt for more than one monument there?

A. The international boundary monument?

Q. Yes, sir.

A. No, sir.

Q. Did you ever know of their having been changed on objection of the Mexican commission?

A. I have heard of lots of monuments being changed.

Q. Wasn't there one changed in that neighborhood?

A. I found out afterwards they were not changed.

Q. Wasn't one changed in that neighborhood? Don't you know now, as a matter of fact, from your examination and your reading of the report of the boundary survey that the first established monument was changed upon objection by the Mexican commissioner?

A. No, sir; not as shown in Emory's report?

Q. I am speaking now on the San Pedro.

A. I can't testify as to what I might have heard; I never heard anything about that.

Q. I am asking you with reference to locating monuments; I want you to understand it. Don't you know that there are two international boundary monuments, or the remnants or remains of two, there on the San Pedro?

A. I don't know it as an actual fact.

Q. Did you ever examine to see whether there were?

92 A. I never went to but that one monument that is on the east side of the San Pedro, where I found the initials.

Q. Never went on the west side of it to find whether there was another one there?

A. No, sir.

Q. You knew from history, from the report of Emory, that he had established a monument there, and had changed it upon objections made by the Mexican commissioners?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you have his report?

A. I have gone over his report, but I do not recollect that, sir.

THOMAS A. BORTON, a witness called and sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. HERRING:

Q. You reside here in Tucson?

A. I do, sir.

Q. How long have you been living in this Territory?

A. Since April 5, 1872.

Q. At any time have you been in the employ of the surveyor-general's office?

A. Yes, sir.

Q. When?

A. I was employed in the surveyor-general's office in the years 1881 and 1882, and again in 1887.

Q. Who was surveyor-general in 1887?

A. John H. Hise.

Q. At any time while you were employed in that office have you been directed or authorized or requested to perform any measurements in relation to distances in the southern part of Cochise County in connection with the boundary line?

A. I was, sir; in connection with other instructions that I had.

Q. Have you at any time measured the distance between what is known as the town or location of Hereford, on the San Pedro River, and the boundary line?

A. Yes, sir; I made a trip there in January, 1887, and that distance was measured.

Q. By whom?

A. By the son of the surveyor-general, who was my assistant when I was making some investigations there.

Q. Were you in his company at the time?

A. Yes, sir; he was an assistant of mine.

Q. How was it measured?

A. With an odometer.

93 Q. What was the distance between Hereford and the international boundary line?

A. Something over seven miles by the road.

Cross-examination by Mr. REYNOLDS:

Q. What were you doing down there?

A. I was sent down there to locate the initial point of the San Pedro private land claim.

Q. Did you locate it?

A. I did not.

Q. Why?

A. I could not locate the initial point within the United States, and I had no authority to cross the line.

Q. You made an effort to locate the initial point of the San Pedro ranch within the United States and could not do it?

A. No, sir; I couldn't.

Redirect examination:

Q. What is the reason you could not?

A. The reason I couldn't—I had a copy of the original expediente with me, and owing to the indefiniteness of the descriptive calls in that grant it was impossible for me to locate it where the petitioner—to explain the matter it might be well for me to state that in January or some time in the winter of 1886 or the first part of 1887 Hereford & Lovell, the attorneys for Hall & Ashton, who were claiming it, filed an application for a preliminary survey with the surveyor-general, and also filed a map showing the initial point of that grant. Before the surveyor-general could appoint a deputy surveyor and send him to make the survey it became necessary for him to make investigation to ascertain where the initial point was, and that was my duty there, and I failed to find the initial point.

Recross-examination:

Q. Did you ever afterwards locate the initial point of the San Pedro?

A. No, sir; I never had occasion to.

Q. As a matter of fact, you were not able to locate it within the United States?

A. Not in the United States; no, sir.

Q. Did you attempt to locate it below the line?

A. I did not.

Q. Did you not report that the grant was not within the United States?

(Objected to as calling for secondary evidence.)

By Mr. HERRING. I will state that in view of the developments made in this case counsel for claimant desires to offer in evidence an instrument of record in the county of Cochise—instruments
94 of record there and certified copies thereof—and we now state that we will do so, showing conveyance direct from José Maria Elias, asserting ownership in the San Pedro grant, to Thaddeus D. Byrne of a portion of the San Pedro grant abutting upon Hereford. We are now able to offer that deed, because we did not believe that it would be disputed that the boundary line of the San Pedro grant was where we say it is in our map. But we announce that we are able to produce the deed in question. The foundation for this offer may be found by the court in the fact that there is now in evidence a certified copy in Spanish of the expediente of the San Pedro grant, with English translation, showing that

this certified copy was taken by the archievaro or the treasurer-general in Hermosillo at the instance and request of José Maria Elias, then the owner of the grant, showing that at the time this survey was made that the title to the San Pedro grant was then in and being asserted by José Maria Elias. We say that previous to this survey the deed from Elias to Byrne discloses the fact of his conveyance of a tract of land in the northern part of the San Pedro grant abutting the town of Hereford, and we ask the court to consent that that deed may be put in, otherwise we would have to keep this case open until we could furnish this certified copy. We will do it by wire if the court desire it, but I do not apprehend that counsel will require any such imposition.

By Mr. REYNOLDS. If it were here, I can not see how it would be material. The expediente is in evidence, and the fact that a deed is made, based upon that, can add nothing to the location of that grant. If it were here, it could not be competent. It is a declaration of the party in his own favor, and can not bind the United States. On the contrary, it may raise another issue as to what declarations Mr. Elias might have made at the time of the sale referred to—this gentleman.

By Mr. HERRING. The instrument will disclose the fact that Elias, in this deed, provided by certain covenants for the laying out of a town on this San Pedro grant adjoining the town of Hereford, and the covenants and conditions were subsequent in relation to vesting of title, providing the town was laid out on the San Pedro grant, abutting the town of Hereford.

By the COURT (after argument). If this document were here, we think it would not fall either within the rule or the exception referred to. If it were here, it might be admitted simply as allowing the petitioner to make up his record.

By Mr. HERRING. Will the court consider the instrument in, unless there be fatal objection to its execution? So far as the facts recited in the instrument are concerned, we have stated them fully and frankly to the court, and we think we have the right, and your honors will pardon me if I say I think it should be the practice of this court, in instances of surprise, as in this case, if counsel can adduce corroborative evidence, such as has been stated, I think we ought to be permitted to have the benefit of such existing testimony upon such an important fact.

By the COURT. Our practice has been in these cases to admit
95 almost any documentary evidence, subject to objection, which the party claimed as material to his case, whatever our views as to its materiality or relevancy may be, and we have done that upon the ground that, as these cases are reviewable in another court and triable there de novo, he has a right in the preparation of his case for that court to make up the record in his own way. If the document were here we would admit it into the record, although our present view is that it would be incompetent. The question now is whether it should be placed in the record hereafter for that purpose.

To that the court has no objection.

By Mr. HERRING. Then we ask that it be considered in under objection as to the statement made by counsel as to its contents.

(It was agreed that the document would be filed with the clerk and marked as an exhibit in this case in its numerical order.)

By Mr. HERRING. We will now make our offer of documentary evidence in addition to that already offered:

First. The certificate of the treasurer-general of the State of Sonora upon examination of archives in that office; also certified to by the acting governor.

(Marked Exhibit "23.")

Second. A similar certificate made at the same time by the archievaro in relation to the matrix on file.

(Marked Exhibit "24.")

Third. Translation of the judicial inquiry we offered yesterday in the original Spanish.

(Marked Exhibit "25.")

Fourth. Field notes of the survey of San Rafael del Valle.

(Marked Exhibit "26.")

Fifth. Certified copy of title papers of San Rafael del Valle.

(Marked Exhibit "27.")

Sixth. Word-for-word translation of title papers.

(Marked Exhibit "28.")

Seventh. Copy in Spanish of the judicial inquiry of 1869.

(Marked Exhibit "29.")

Eighth. Translation of same.

(Marked Exhibit "30.")

Ninth. Certified copy of original title papers in English.

(Marked Exhibit "31.")

Tenth. Copy of translation of same.

(Marked Exhibit "32.")

Rest all.

Testimony closed.

96 PLAINTIFF'S EXHIBIT 1.

Titulo.

De Merced de cuatro sitios de tierra que comprende el puerto de San Rafael del Valle—jurisdicion del Presidio de Sta. Cruz—Espedido por la Tesoreria General del Estado de Sonora, a favor del ciudadano—Rafael Elias Gomzales.

Journal, vol. 1, pages 19–28.

Jose Maria Mendoza, Tesoreria General, del Estado Libre, Ynde pendente y Soberano de Sonora.

Por cuanto; el articulo 11 del soberano decreto numero 70, del congreso general de la union fho. 4 de Agosto de 1824 concede a los Estados los rentos que en dicha ley no * * * reservo la Federacion y siendo una de ellad lo de los terrenos de sus respectivos distritos, que les pertence por consecuencia, para cuya mercenacion dicto el honorable congreso constituyente del Estado que fue unido de Sonora y Sinaloa la ley numero 30 de 20 de Mayo de 1825, asi como los succebivas Legislaturas, otros decretos relativos; habiendo hecho formal denuncio en 12 de Marzo

de 1827 el ciudadno Rafael Elias de la vecindad de esta capital, ante la Tesoreria general que fue del Estado Unido a los terrenos nombrados San Rafael del Valle, sitos en la jurisdicion del Presidio de Santa Cruz, de fue admitido conforme a dros con fecha 1st de Julio del mismo ano; y el escrito de denuncio, decreto de comision y auto de obedecimento son del tenor siguiente.

Escrito.

Senor TESORERO GENERAL:

Don Rafael Elias ante U. S. se presenta en debida forma y dice:

Que necesitando terreno para bienes de compo, denuncio el baldio que linda con el rancho de San Pedro, en la comprension de Santa Cruz hasta el punto de tres Alamos, obligandome a satisfacer a la nacion los derechos que le correspondan con lo demas que fuese de justicus hasta adquirio el titulo de merced y confirmacion, para cuyo efecto se ha de servir U. S. hacer por registrado y denunciado dicho terreno baldio.

Por tante a U. S. suplico se sirva mandar proveer como solicito en lo que recibure merced.

Arispe 12 de Marzo de 1827.

Por ausencia y ruego de Don Rafael Elias.

JOAQUIN ELIAS.

Decreto.

Cosala 1st de Julio 1827.—El Alcalde depolicia de Santa Cruz procedera con faculted que para ello se lo confiere sin perjuicio de tercero que
97 mejor derecho represente, y previa citacion de los colindantes a los medidas avaluos y pregones por treinta dios consecutivos de las tierras que expresa el anterior denuncio sugetandose en todo al Soberano decreto del Honorable Congreso Constituyente del Estado No. 30 de 20 de Mayo de 1825 y al reglamento que le acompana y evecuados que sean dichas diligencias, las remitira a esta Tesoreria citando a los postores que resultero para que ocurran por si o por opoderados al remate que debe celebrarse en esta oficina previas las tres publicos almonedas de estilo.

El Tesorero General del Estado Nicolas Maria Gagiola asi lo decreto y firmo.

GAJIOLA.

Acto de Obedecimiento.

En el Presidio de Santa Cruz a veinte dias del mes de Agosta de mil ochocientos veinte y siete; cumplase lo mandado en el decreto del Senor Tesorero General del Estado Dn. Nicolas Maria Gajiola, y al efectos con citacion de los interesados o apoderado para ello, y colimtantes si los hubiere, y acompanado de los demas, oficiales necesarios que al efecto se numbraran, posese por mi al rancho de San Pedro con el fin de que se proceda a la mensura de los terrenos denunciados este es los que pertenecen y corresponden al ciudadano Rafael Elias, cuyas medidas deben verificierse con separacion, a los que debon dar a los demas denunciant es que lo hicieron en consorcio y constan en la copia del escrito con que principian estos diligencias.

El ciudadano Pablo Fraijo, Alcalde Constitucional de Policia del Presidio de Santa Crus por el presente auto asi do determino, mando y firmo por ante los testigos de su asistencia por falta de escribano publico segun derecho.

PABLO FRAIJO.

Asistencia:

SATURNINO LIMON.

Asistencia:

JOSE MARIA SOTELO.

Segundamente procedio el alcalde comisionado al nombramiento de oficiales, contador, opuntador y medidores que lo fueron los ciudadanos Mauricio Neiraz Franco Sandoval, Jose Samaniego, Manuel Soto y Camilo Arvizu, quienes oficieron y juroron cumplir fiel y legalmente con sus respectivos encargos, y con citacion del interesado y colindantes, dio el Alcalde las medidas que constan de la siguiente diligencia.

Diligencia de Medidas.

En el puesto nombrado San Rafael de Valle en veinte y un dias del mes de Agosto de mil ochocientos veinte y siete; yo el espresado Juez Agrimensor para dar principio a los medidas de los terrenos denunciados por el ciudadano Rafael Elias entregue una cuerda bien toraida y estirada a los oficiales nombrados y una vara
98 castellana en la que se midieron y contaron de dicha cuerda dincuenta varas, y hecha esta operacion se amarron sus estremos a una esta y presente el interesado se dio principio a los medidas desde el punto que se fijo por centro que lo fue donde ecsistian unos cerritos y tamando el rumbo del Sur se midieron y contaron doscientos cordeles que remataron con la medida del Rancho de San Pedro terreno mercenado por Du. Jesus Perez, y a su nombre estubo presente el administrador del mismo rancho presentando los documentos de que hasta aquel punto correspondia a sus medulas, cuya mojonera que allo ecsistia quedo por lindero de uno y otro interesados, y buelto al centro se tomo el rumbo hacia la parte del Norte midiendose y contandose doscientos cordeles que remataron sobre el mismo Valle y donde haed un divisade rito caloso en donde mande se pusiese un monton de piedras en senal de mojonera y buelto al centro se fueron midiendo y contando para el rumbo del Oriente hasta cincuenta cordeles que remataron sobre el Valle y frente a la Sierra de las mulas, en donde se puso un monton de piedras en senal de mojonera, de cuyo punto retrocedi al centro, de donde se continuo la medula por el lado del Poniente midiendose y contandose hasta cincuenta cuerdas que remataron sobre el mismo Valle que queda frente a la cordillera de la Sierra de Guachuca en donde se puso un montan de piedras en senal de mojonera con lo que y cien cordelas que por uno y otro estremo del remate de medidas de Sur a Norte se midieron por razon de cuadra poniendose en sus remates los correspondients mojoneras, quedo concluida esta medida resultando de ella cuatro sitios para cria de ganado mayor y caballada en favor del referido ciudadano Rafael Elias con lo que quedo conforme y se dio por recibido del terreno mercenado, quedando inteligenciado de que oportunamente debia senalor todos sus linderos con mojoneras de cal y canto segun esta prevenido, y para constancia le pongo por diligencia

que firmo con migo el espresado Elias, y no lo hicieron los demas oficiales nombrados por no saber escribir, con los testigos de mi asistencia, a falta de Escribano publico segun derecho.

PABLO FRAIJO.
RAFAEL ELIAS.

Asistencia:
SATURNINO LIMON.
Asistencia:
JOSE MARIA SOTELO.

Yncontinente procedio el alcalde al correspondiente avalue del terreno, por medio de peritas inteligentes, que lo fueron dos ciudadanos Manuel Soto y Camilo Arvizu, quien es verificaron dicho acto previo juramento de estilo y segun sus practicos conocimientos y con arreglo a los superiores disposiciones de la materia, justiprecioron los cuatro sitios en doscientos cuarenta pesos a razon de sesenta cada uno por tener aqua corriente. Con este avaluo el alcalde los saco alpregon en solicitud de postures por treinta dias consecutivos desde el 30 de Agosto 1827 hasta el 28 de Setiembre del mismo ano. No resulto ninguno; concluyo el
99 espediente y por auto de 30 del mismo mes y con citacion del interesado lo remitio para su remate a la Tesoreria general, quien con decreto de 7 de Febrero de 1828, poso al conocimiento del Promotor Fiscal, cuyo pedimento es como a la letra sigue.

Pedimento fiscal.

Senor TESERERO GENERAL:

Este es un expediente que se contrate a la medida de cuatro sitios para cria de ga nado mayor y caballada, practicadas por el Alcalde del Presidio de Santa Cruz en favor del ciudadano Rafael Elias, cuya terreno se denimina San Rafael. Su avaluo es de dos cientos cuarenta pesos segun el computo de los suyetos que desempenaron tal encargo, que dando rematados en dicha suma en favor del interesado.

Las observaciones del Promoter en el expediente pudieron entenderse con motivo a vicious en las actuaciones, pero como no presentan mayores obstaculos, las omite, y solo extremo no se hiciese uso del aqujien para proceder a la medida en ocasion de que este instrumento es indispensable para seguir el rumbo; de manera que bolviendose a medir el terreno por falta de ese sequisito, es entrar en trastormo y prejudicar gravemente a la parte, por io que opina el Fiscal, que no habiendo contradiccion de partes por la que se evidencie perjuicio de tercero, disimule esa falta y se proceda a la adjudicacion que corresponda segun las formalidades y requisitos de estilo. Este es mi modo de pansar.

Concepcion de Alamos 7 de Febrero de 1828.

MANUEL DE LA BRENA.

Y habiendose conformado la Tesoreria General con el preinserto pedimento Fiscal, por auto de 16 de Abril, procidio a las tres publicoz almonedas en el mismo dia 16 el 17 y 18, en solicitud de postores; y no habiendo resultado minguno, quedaron rematodos los cuatro sitios de tierra para cria de granado mayor y caballada, del puesto de San Rafael del Valle a favor del ciudadano Rafael Elias como se justifica de la tercera Almoneda que sigue.

Tercera Almoneda y Remate.

En dicha ciudad a los dies y ocho diaz del mes de Abril de mil ocho cientos veinte y ochoz. Comvocados en junta de Almonedas el Senor Presidente y Vocales que la componen procedieron a la celebracion de la ultima para el remate de los cuatro sitios de tierra de que trata este espediente, practicandola en los proprios terminos que la primera antecedente almoneda, con solo anadir que en este momento ha de quedar celebrado el remate. Y siendo ya dada la plegaria de las doce de este dia sin que occurriese ningun postor dijo por ultimo el prejonero; "A la una, a las dos, a los tres, que se remata, que se remata, que se remata, que buena, que buena, que buena pro le haya a Dn. Rafael Elias."

En tales terminos se concluyo este acto quedando publico
100 y selemnemente rematados en favor de este interesado los cuatro sitios de tierra para cria de ganado mayor y caballada en la cantidad de dos cientos cuarenta pesos en que fueron avaluados. Y para la debida constancia se pone por diligencia que firmaron los Senores Presidente y Vocales de la junta haciendolo tambien el apoderado que lo fue Don Tiburcio Gomez.

GAJIOLA.
GOMEZ.
URRUTIA.
TIBURSIO GOMEZ.

En seguida procedio el apoderado ciudadano Tibursio Gomez a enterar en la Tesoreria, los dos cientos cuarenta pesos en que fueron valuados y rematados los cuatro sitios de tierra del puesto de San Rafael del Valle como se acredita de la certificacion que a la letra sigue.

Certificacion.

Nicolas Maria Cajiola, Tesorero General de las rentas del Estado de Occidente.

Certifico; que al folio 14 del lioro manual de esta Tesoreria del corriente ano; se halla centada con esta fha. la partida del tenor siguiente. Cargo en mercedes de tierras, dos cientos cuarenta pesos enterados por Don Tibursio Gomez a nombre de Don Rafael Elias vecino de Arispe por la merced de cuatro si tios de tierra para cria de ganado mayor y caballada en el paraje nombrado San Rafael del Valle enjurisdiccion del Presidio de Santa Cruz, habiendose avaluado cada sitio a razon de sesenta pesos por tener agua corriente, los cuales se remataron en favor de dicho Elias en junta de Almonedas celebrado en esta capital el dia 18 del corriente, 240.00.

TIBURSIO GOMEZ.
GAJIOLA.

Y para que conste doy la presente en Alamos a veinte y uno de Abril de mil ocho cientos veinte y ocho anos.

NICOLAS MARIA GAJIOLA.

Agregada la preinserta certificacion original al expediente quedo este concluida con todos los requisitos y formalidades que previenen las leyes custodiandose en esta Tesoreria General para perpetua constancia.

Por tanto; usando de la facultades que me conceden las leyes,

por el presente y a nombre del Estado Soberano de Sonora, confiero merced en forma de derecho de cuatro sitios de tierra para cria de garado mayor y caballada que comprende el puesto nombrado San Rafael del Valle sito en jurisdiccion del Presidio de Santa Cruz a favor del ciudadano Rafael Elias de la vecindad de esta capital, a quien concedo, doy y adjudico dicho torreno por via de venta, y con
101 las calidades, firmesa y subsistencia que establecen las leyes, para si, sus hijos, herederos y sucesores, con todos sus entrados, salidas usos, costumbres, servidumbres, maderos, montes, partos, agnoses, a brerraderos y demas que le corresponda; con la presisa catidad y terminante condicion de que han de mantener poblados y amparados dichos sitios, sin que esten despoblados, desiertos, ni desamparados por tiempo alguno, bajo el a percibimiento de que si se verificase su total abandono por espacio de tres anos consecutivos, y hubiere alguno persona que los denunciare, en lal, evento, con previa calificacion del hecho, se declararuen por valdios y se adjudicaron de nuevo a favor del mejor postor, eceptuandose como es justoaquellos casos en que el desamparo, sea por causa de notoria invasion de enemigos, y por solo el periodo de semejantes acontecimientos.

Previniendose como estrechomente se, previene al referido ciudadano Rafael Elias y a sus herederos y succesores, que habran de sugetarse y limitarse, al terreno, pertenencias, terminos, y linderos senalados individualmente en las preinsertas diligencias de medidas observando y dando su esacto cumplimiento al articulo 30 de la ley numero 30 de 20 de Mayo de 1825 que les impone la obligacion de montener en sus terminos linderos, mo joneros de cal y canto, bajo la multa de veinti cinco pesos, que se les ecsijira si contra vinieron para los fundos del comun, construyendose por el Juez les espresadas mojoneros de cuenta de los interesados. Y ordeno y mando, a los Jueces, Justicias y autoridades locales que al presente son y en adelante fueron del partido de esta capital, que en obsequio de la buena y pronta administracion de Justicia y en cumplimiento de las leyes de la materia, no permitan que el referido interesado, ni sus succesores, sean de ninguna manera pertubados, inquietados ni molestados en el libre uso, ejercicio, propiedad, dominio y posesion de los mencionados cuatro sitios de tierra que comprende el puesto de San Rafael del Valle, ante si celarian y curidaran constantemente y con la mayor vigilancia y actividad, que sean amparados y mantenidos siempre en la quieta y pasifica posecion que les corresponde con legitimo derecho para que de este modo puedan libremente vender, cambuar, permutar, donar, transpasar, ceder y enagenar dichos cuatro sitios a su arbitrio y libre eleccion, como duenos, proprietarios absolutos. En cuyos terminos espedi el presente titulo de merced en forma a favor del ciudadano Rafael Elias sus herederos y sucesores, entregandosele para su reguardo con previa toma de razon en el correspondiente libro. Dado en la capital de Arispe a los viente y cinco dias del mes de Diciembre de mil ochocientos treinta y dos; autorizado y firmado por my sellado con el sello de esta tesoreria gral. por ante los infraceritos testigos de mi asistencia con quienes actuo a falta de escribano que no lo hay segun dro.

JOSE MARIA MENDOZA.

Assa.:
LUIS CARRANCO.
Assa.:
BARTOLO MIRANDA.

102 Queda tomada razon del presente titulo en el correspondiente libro que ecciste en esta tesoreria general al folio 11.

Una rubrica.

Numero 762. Mediante que los interesados en quienes fueron rematados en 18 de Abril y 24 de Diciembre de 1828 los terrenos de San Rafael del Valle, San Juan de las Boquillas y Nogales y San Ygnacio del Bavocomari sitos en jurisdiccion del Presidio de Santa Cruz, ciudadanos Rafael Elias por el primero de dichos terrenos, Capitan Ygnacio Elias Gonzales y Nepomuceno Feliz por el segundo, Ygnacio y Eulolio Elias por el Tercero; hon acreditado su inculpobilidos en que no se les espidiesen los respectivos titulos de Merced por la Tesoreria General del Estado que fue Unido de cuya oficina los solicitaron desde antes del 10 de Julio de 1830, procedera U. S. a espedirles dichos titulos de gratis, de conformutad con lo dispuesto por el decreto Numero 27 de 11 de Agosto 1831.

Dios y Libertad.

Arispe 29 de Abril de 1833.

YGNACIO BUSTAMANTE.
LUCAS RODRIGUEZ, *1st Señor.*

Tesorero General del Estado.

Escopia.

Arispe 8 de Mayo de 1833.

JOSE MARIA MENDOZA.

TERRITORY OF ARIZONA, *County of Pima:*

I certify that the foregoing instrument was recorded by me April 27th, 1867, on pages 116, 117, 118, 119, 120, 121, 122, 123, 124, Book of Deeds 1.

In testimony whereof I have hereunto set my hand and affixed the official seal of my office, at Tucson, Pima County, on this the first day of May, A. D. 1867.

JOHN H. ARCHIBALD,
Recorder Pima County, Arizona Territory.

TERRITORY OF ARIZONA, *County of Pima, ss:*

On this the twenty-fifth day of November, A. D. one thousand eight hundred and seventy-four, I, the undersigned, county recorder in and for the aforesaid county, do certify that the foregoing is a true and correct copy of the original now on record in this office.

Recorded in Book "One" of Deeds, pages 116 to pages 124, inclusive. Recorded April 27th, 1867.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.]

A. BRICHTA,
Recorder Pima County, A. T.

103 Filed in the U. S. surveyor-general's office, Arizona, on the twenty-fifth day of November, 1874, at request of V. E. Howard & Sons, att'ys for claimants.

JOHN WASSON,
Surveyor-General.

(Endorsed:) Filed Dec. 3, 1891. James H. Reeder, clerk, by Irenio Chaves, dep. clerk.

PLAINTIFF'S EXHIBIT 2.

Certified copy of the duplicate report on rancho of San Rafael del Valle made by R. C. Hopkins, special agent, under instructions from the U. S. General Land Office, of date March 4, 1879, and now on file in the office of the U. S. surveyor-general, district of Arizona, Record "Hopkins' Original and Duplicate Reports," pages 214, 215, and 216.

Rancho of San Rafael del Valle.

Situated in the jurisdiction of the presidio of Santa Cruz, containing four square leagues, granted on the 25th of December, 1832, to Rafael Elias under the law of the 4 of August, 1824, and that of the 20th of May, 1825, with the following boundaries, as copied from the field notes of the survey in the original expediente:

Se dió principio á las medidas desde el punto que se fijó por centro que lo fué donde estan unos serritos y tomando el rumbo del Sur se midieron y contaron doscientos cordeles, que remataron con la medida del Rancho de San Pedro, terreno recordado á Don Jesus Perez y á su nombre estubo presente de Admor. del mismo Rancho presentando sus documentos de que hasta aquel punto correspondia sus medidas cuya mojonera que alli existia quedó por lindero de uno y otro interesado: y buelto al centro se tomó el rumbo hacia la parte del Norte, midiendo y contando doscientos cordeles que remataron sobre el mismo valle, y en donde hace un divisadero caloso en donde mandé se pusiese un monton de piedras en señal de mojonera: y buelto al centro se fueron midiendo y contando para el rumbo del Oriente hasta cincuenta cordeles que remataron en el valle y frente á la Sierra de las Mulas, en donde se puso un monton ne piedras en señal de mojonera, de cuyo punto se tendió al centro de donde se continuó la medida por el lado del Poniente, midiendo y contando kinkuenta cordeles que remataron sobre en mismo valle que queda en frente de la Cordillera de la Sierra de Guachuca en donde se puso un monton de piedras enseñal de mojonera con la que y cien cordeles que por uno y otro extremo se midieron del remate se Sur a Norte, se midieron por razon de cuadro poniendo en sus remates las correspondientes mojoneras queda concluida esta medida: resultando de ella cuatro sitios para cria de ganado mayor y caballada en favor del referido Cuidadano Rafael Elias con loque quedo conforme, y se dio por recivido el terreno mencionado, quedando inteligenciado de que oportunamente devia señalar todos sus linderos con mojoneras de cal y canto, segun esta prevenido.

104 *Registry in Book Toma de Razon.*

En el ocho de Mayo (1833) se entrogó de gratis al Cuidadano Rafael Elias Gonzales con arreglo a lay en titulo de merced que con fecha de 25 de Diciembre 1825 se espidó á favor de dicho individuo de cuatro sitios de tierra para cria de ganado mayor y caballada, que corresponde al puesto nombrado de San Rafael del Valle sito en jurisdiccion de Presido Santa Cruz.

(Signed) MENDOZA.

Remarks on original title papers of rancho San Rafael del Valle.

The original expediente of this grant is found in the proper place in the archives; it is written on the corresponding stamped paper; proceedings of survey, valuation, publication, and sale are all regular; no borrador or draught found in the expediente, but that is attached to the , a certificate that on the 25th of December, 1832, the title was issued; this certificate is signed by Treasurer-General Mendoza. There is also a certificate that Rafael Elias had paid into the treasure the sum of $240.00, the amount at which the land had been valued and sold.

There is nothing on the original title papers calculated to cast any suspicion on same.

"Rancho San Rafael del Valle."

OFFICE OF SURVEYOR-GENERAL,
Tucson, Arizona, March 8th, 1893.

I hereby certify that the three-page papers attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

(Signed) ROYAL A. JOHNSON,
[SEAL OF OFFICE.] *U. S. Surveyor-General,*
District of Arizona.

(Endorsed:) Filed March 26, 1894. James H. Reeder, clerk, by R. L. Long, dep. clerk.

PLAINTIFF'S EXHIBIT 3.

Title deeds.

Of the grant of four "sitios" of land embraced in the property known as San Rafael del Vaile, in the jurisdiction of the presido of Santa Cruz, issued by the treasurer-general of the State of Sonora in favor of the citizen Rafael Elias Gonzales.

Second-class seal, two reals (the free State of Sonora), for the years 1831 and '32.

JOSE MARIA MENDOZA, treasurer-general of the free, independent, and sovereign State of Sonora, greeting:

Inasmuch as article 11 of the sovereign decree number 70 of the general congress of the union, dated August 4th of 1824 con-
105 cedes to the States the revenues which in said law it did not reserve for the federation itself, and one of them being that derived from the lands within their respective territories, which in consequence belongs to them, for the disposition of which the honorable constitutive congress of the State that used to be joined of Sonora and Sinaloa enacted the law No. 30 of May 20th of 1825, as well as the decrees relative thereto passed by other succeeding legislatures, and the citizen Rafael Elias, a resident of this capitol, having made due application on the 12th of March of 1827, at the treasury-general that was then of the United

States, for the lands named San Rafael del Valle, located in the jurisdiction of the presidio of Santa Cruz, which was allowed according to law on the date of July 1st of the same year, and the petition of entry, the order for the commission, and the act of accepting the charge being as follows, to wit:

Petition.

Mr. TREASURER-GENERAL:

Don Rafael Elias presents himself before you in due form and says that, needing land for stock purposes, he asks for the public lands adjacent to the ranch of San Pedro, within the jurisdiction of Santa Cruz, as far as the place called Tres Alamos, binding myself to make good to the nation the duties that belong to it and whatever else may be just until he shall acquire the title deeds and confirmation thereof, for which purpose you will please consider said public lands as taken up and claimed.

Wherefore I pray you will please order compliance with what I ask, in which I will be greatly favored.

Arispe, March 12th of 1827.

In the absence and at the request of Don Rafael Elias.

JOAQUIN ELIAS.

Decree.

COSALA, *July 1st of 1827.*

Let the alcalde of the police of Santa Cruz, with the power which for that purpose is hereby conferred on him, without prejudice to any third party who may have a better right, and with the previous summons of adjacent owners, proceed to the survey, appraisement, and *to* put up at public sale for thirty consecutive days the lands indicated in the foregoing petition, acting strictly in all things in accordance with the sovereign decree of the honorable constituting congress of the State, number 30, of May 20th, 1825, the regulations attached to it; and these proceedings having been finished, you will remit the process to this treasury, giving notice to the bidders that may present themselves, so that they may appear in person or by attorney at the auction that will take place at this office after the three previous auctions provided by law. The treasurer-general of the State, Nicolas Maria Gaxiola, so decreed it and signed it.

GAXIOLA.

106 *Act of obedience.*

In the presidio of Santa Cruz on the twentieth day of the month of August of the year one thousand eight hundred and twenty-seven:

Let the command of the decree of the treasurer-general of the State, Don Nicolas Maria Gaxiola, be complied with; and for that purpose, after summoning the interested parties or their attorney therefor and the adjacent owners, if there be any, and accompanied by the other necessary official who will be appointed for the object, I shall go to the ranch of San Pedro in order to proceed with the survey of the lands petitioned for—that is, those that pertain or are claimed by the petitioner, the citizen Rafael Elias, whose survey must be made separately from those that have to be made for the other petitioners, whose entries are made jointly

and appear in the copy of the writing with which this proceedings begin.

The citizen Pablo Fraijo, constitutional alcalde of the police of the presidio of Santa Cruz, by the present act so determined it, ordered, and signed before his assistant witnesses in the absence of a regular clerk, as provided by law.

PABLO FRAIJO.

Assistant:

SATURNINO LIMON.

Assistant:

JOSE MARIA SOTELO.

Forthwith the alcalde so commissioned proceeded to appoint the officers, counters, tallymen, and chainmen. These were the citizens Manrico Neira, Francisco Sandoval, Jose Samaniego, Manuel Soto, and Camilo Arvisu, who promised and swore to comply faithfully and legally with their respective charges; and, after summoning the interested party and the adjacent owners, the alcalde made the survey that appears in the following proceedings:

Proceedings of survey.

At the place called San Rafael del Valle, on the twenty-first day of the month of August, of the year one thousand eight hundred and twenty-seven, I, the said surveying alcalde, in order to begin the survey of the lands to be taken up by the citizen Rafael Elias, presented a cord, well twisted and stretched, to the aboved-named officials and a Castillian vara measure, with which were measured and counted off fifty varas of said cord, and, this having been done, the extremes of the cord were tied to poles, and, the interested party being present, the survey was begun from a point which was taken as centre, which was at a place where there are some small hills, and, taking the direction of the south, there were measured and counted two hundred cords, which ended at the limits of the San Pedro ranch, land belonging to Don Jesus
107 Perez, and in his stead the superintendent of the same ranch was present and exhibited the documents, which showed that his surveys extended up to that place, the monument of which standing there was taken as the boundary of one and the other interested parties; and returning to the centre the northern direction was taken, measuring and counting two hundred cords, which ended upon the valley where there is a small, rising, calcarious knoll, where I ordered to be placed a heap of stones as a monument; and returning to the centre there were measured and counted toward the east fifty cords, which ended upon the valley and frounting the Mule Mountains, where I put a heap of stones as a sign of monument, from which place I returned to the centre, from which was counted the measurement on the side of the west, measuring and counting fifty cords, which ended upon the same valley, fronting toward the Huachuca Mountains, where there was put a heap of stones as a sign of monument, with which and one hundred cords that were measured from one and the other extremities of the lines running south and north, so as to square the land, placing at the end of each the corresponding monuments, the survey was concluded, resulting therefrom four sitios for raising cattle and horses in favor of the aforesaid citizen

Rafael Elias, with which he was satisfied and took possession of the land so segregated, being informed that at the proper time he had to mark all its limits with monuments of stone and mortar, as is by law provided.

In witness whereof I note it down in these proceedings, which were signed with me by the said Elias, and the other appointed officers did not do so, because they did not know how to write, with the assistant witnesses for lack of the regular clerk, according to law.

PABLO FRAIJO.
RAFAEL ELIAS.

Assistant:
SATURNINO LIMON.
Assistant:
JOSE MARIA SOTELO.

Immediately thereafter the alcalde proceeded to the appraisement of the land through intelligent experts, who were the citizens Manuel Soto and Camilo Arvisu, who did so having previously taken the regular oath, and, according to their practical knowledge and in conformity with the superior regulations in the premises, they adjudged the value of the four sitios to be two hundred and forty dollars, at the rate of sixty each, because they had running water.

With this appraisement the alcalde put them up at public auction, asking for bidders, for thirty consecutive days from August 30th of 1827 to September 28th of the same year. There were no bidders. The proceedings were concluded, and by order of the 30th of the same month and after summoning the interested party, the alcalde remitted them to the treasury general, to be put up at auction, which by the decree of February 7th, 1828, placed them before the fiscal attorney, whose opinion is, word for word, as follows:

108 *Opinion of the Fiscal Attorney.*

Mr. TREASURER GENERAL:

These are the proceedings concerning the survey of four sitios for raising cattle and horses, executed by the alcalde of the presidio of Santa Cruz in favor of the citizen Rafael Elias, which land is called San Rafael. Its appraised value is of two hundred and forty dollars, according to the calculations of the persons who undertook the charge, being finally bid in for that sum in favor of the interested party.

The remarks of the fiscal attorney concerning the proceedings might be extensive on account of defects in the proceedings, but as they do not present any great obstacles he omits them, and he only finds it strange that no use was made of the compass in making the survey, as this instrument is indispensable to follow a route, so that to survey the land over again for the want of this requisite is to enter into difficulties and greatly to injure the claimant, for which reason the fiscal attorney, there being no contestants that show any damage to third parties, is of the opinion that this fault be overlooked, and that the proceedings be continued to adjudication, according to the forms and requisites in use.

This is my way of thinking.

MANUEL DE LA BRENA.

CONCEPCION DE ALAMOS, *February 7th, 1828.*

And the treasury general, having been satisfied with the foregoing fiscal statement, by the order of April 16th proceeded with the three public auctions on the same 16th day, 17th, and 18th, asking for bidders, and, there appearing none, the four sitios for raising cattle and horses of the place San Rafael del Valle were auctioned off in favor of the citizen Rafael Elias, as is apparent by the last auction, which is as follows:

3d offering and auction.

In said city on the eighteenth day of the month of April, of the year one thousand eight hundred and twenty-eight, having convened as an auction committee, the president and the directors who composed it proceeded to the last auction for the four sitios of land to which these proceedings refer, acting in the same manner as in the first anteceding auction, with the only difference that on this occasion the contract was to be final; and it being twelve o'clock meridian of this day without there appearing any bidder the caller said finally, "One, two, three; going, going, gone; may it do good, may it do good, may it do good to Don Rafael Elias."

In these terms these proceedings concluded, the four sitios of land for raising cattle and horses being publicly and solemnly auctioned off in favor of the interested party in the sum of two hundred and forty dollars, for which they were appraised.

109 In witness whereof it is so set forth in the proceedings, which were signed by the president and the directors of the committee, and also by the attorney (of Elias), who was Don Tiburcio Gomez.

GAXIOLA.
GOMEZ.
URRUTIA.
TIBURCIO GOMEZ.

Forthwith the attorney (of Elias), the citizen Tiburcio Gomez, proceeded to pay into the treasury the two hundred and forty dollars in which the four sitios at the place called San Rafael del Valle had been appraised and auctioned off, as appears from the following certificate herein set forth, word for word:

Certificate.

Nicolas Maria Gaxiola, treasurer-general of the rents of the state of Occidente.

I certify that on folio 14 of the diary of this treasury of the current year is found entered, with this date, an item in the following terms:

Charge for grant of lands, two hundred and forty dollars, paid by Don Tiburcio Gomez, in the name of Don Rafael Elias, resident of Arispe, for the grant of four sitios of land for raising cattle and horses in the place named San Rafael del Valle, in the jurisdiction of the presidio of Santa Cruz, each sitio having been appraised at the rate of sixty dollars on account of having running water, which were auctioned off in favor of said Elias at the public auction, which took place at this capital on the 18th of the current month. $240.00.

GAXIOLA.
TIBURCIO GOMEZ.

In witness whereof I issue the present certificate at Alamos, on the twenty-first day of April, of the year one thousand eight hundred and twenty-eight.

NICOLAS MARIA GAXIOLA.

The present original certificate being added to the documents, the proceedings were concluded with all the requisites and formalities provided by the laws, and they remain in the custody of the treasury-general as a perpetual muniment of title.

Wherefore, in the exercise of the faculties on me conferred by law, by these presents and in the name of the sovereign state of Sonora, I grant in due form of law four sitios of land for raising cattle and horses, comprised in the locality called San Rafael del Valle, situated in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, resident of this capitol, to whom I concede, give, and adjudge said land by way of sale, with the condition, firmness, and permanency established by the laws, for himself, his children, heirs, and successors, with all its rights of ingress and regress, uses, customs, servitudes, timber, mountains, pastures, waters, springs, pools, and other things belonging thereto, with the expressed injunction and marked condition that he must keep said sitios occupied and settled, without letting them be abandoned, deserted, or unprotected for any time, with the understanding that if they be totally abandoned for the period of three consecutive years and there should be any person to petition for them in such an event, with the previous proof made of that fact, they will be declared public lands and granted anew to the highest bidder, excepting, as it is just to do, in those cases in which the abandonment is caused by the notorious invasion of public enemies, and only for the period of the existence of such state of facts, admonishing, as the said citizen Rafael Elias is strongly admonished, as well as his heirs and successors, that they must keep and confine themselves to the lands, pertinencies, monuments, and limits marked precisely in the foregoing proceedings of survey, obeying and complying exactly with article 30 of law 30 of May 20th of 1825, which imposes the obligation to mark the metes and bounds with monuments of stone and mortar, under the penalty of twenty-five dollars fine, which will be exacted of defaulters, to be applied to the benefit of the common, the judge constructing the said monuments at the expense of the owners.

I order and command the judges, tribunals, and local authorities now incumbent and those who may hereafter succeed under the jurisdiction of this capital that, in due regard to the well and prompt administration of law and in compliance with the provisions of law, they do not permit the aforesaid grantee nor his successors to be in any way disturbed, harassed, or molested in the free use, exercise, property, control, and possession of the mentioned four sitios of land comprised in the property of San Rafael del Valle, but, on the contrary, that they watch and guard constantly and with the greatest vigilance and activity, so that the grantees be protected and maintained always in the quiet and peaceful possession to which they are entitled in legitimate right, so that in this manner they may freely sell, change, exchange, give away, transfer, cede, and mortgage said four sitios at their will and free election as absolute owners of the property.

In which terms I issue the present title of grant in due form in favor of the citizen Rafael Elias, his heirs and successors, delivering it to them for their protection, previous memorandum of the same being entered in the proper book.

Given at the capital of Arispe on the twenty-fifth day of the month of December of one thousand eight hundred and thirty-two.

Attested and signed by me, sealed with the seal of the treasury-general, before the undersigned witnesses of my assistance, with whom I act in default of clerk, there being none, according to law.

JOSE MARIA MENDOZA.

Assistant:
LOUIS CARRANCO.
Assistant:
BARTOLO MIRANDA.

[Seal of the Free State of Sonora, Treasury General.]

111 A memorandum of this present title is entered in the proper book kept in the archives of the treasury-general.

Fourth seal, one-fourth real (the free State of Sonora), for the years 1833 and 1834.

Number 763. Inasmuch as the interested parties in whose favor were auctioned off, *in* April 18th and December 24th of 1828, the properties of San Rafael del Valle, San Juan de las Boquillas y Nogales, and San Ygnacio del Bavocomari, situated in the jurisdiction of Santa Cruz, the citizen Rafael Elias, owner of the first of said properties; Captain Ygnacio Elias Gonzales and Nepomuceno Felix, of the second, and Ygnacio and Eulalia Elias, for the third, have shown that it was no fault of theirs that the treasury-general of the State that once was united had not issued to them their respective titles, from which office they demanded them anterior to July 10th of 1830, you will please proceed to issue said titles free of charge, in accordance to what is provided in the decree number 27 of August 11th, 1831.

God and liberty.

Arispe, April 29th, 1833.

YGNACIO BUSTAMANTE.
LUCAS RODRIGUEZ,
First Clerk.

It is a copy.
To the treasurer-general of the State.
ARISPE, *May 8th, 1833.*

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, Dec. 3, 1891. Jas. H. Reeder, clerk. By Irenio L. Chaves, dep. clerk.

PLAINTIFF'S EXHIBIT 4.

(Sello.) (Estampillas canceladas.)

Victor Aguilar, tesorero general del Estado de Sonora, Republica de Mexico.

Certifico que al folio 11 frente y vuelta del libro de Tomas de Razon de los titulos de mereed de terrenos expedidos por la tesoreria general en el año de 1833 se halla una del tenor siguiente:

"En 8 de mayo se entregó de gratis al Co. Rafael Elias Gonzales, con arreglo á la ley el titulo de mereed, que con fecha 25 de diciembre se expidio a favor de dicho individuo, de cuatro sitios de tierra para cria de ganado mayor y caballada, que comprende el puesto nombrado San Rafael del Valle, sito en jurisdiccion del presidio de Santa Cruz.

MENDOZA. [RUBRICA.]"

Y á pedimento del interesado, extiendo el presente en la ciudad de Hermosillo, a los cuatro dias del mes de abril de mil ochocientos noventa y tres.

V. AGUILAR.

112 Rafael Yzabal, vice gobernador constitucional del Estado de Sonora, en ejercicio del poder ejecutivo.

Certifico que el Co. Victor Aguilar es como se titula tesorero general del Estado y suya la firma que antecede.

Hermosillo, abril seis de mil ochocientos noventa y tres.

RAFAEL YZABAL.

[SELLO.] RAMON CORRAL, *Secrit.*

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, Nov. 27, 1893. Jas. H. Reeder, clerk. By R. L. Long, deputy.

(Endorsed:) U. S. Court of Private Land Claims. Juan Pedro Camou vs. United States. Copy. Certified copy. Folio 11, Toma de razon. Ex. 4. William Herring.

PLAINTIFF'S EXHIBIT 4 A.

(Seal.) (Stamps, cancelled.)

Victor Aguilar, treasurer-general of the State of Sonora, Republic of Mexico.

I certify that on folio 11 and on the back of it of the book of "Toma de Razon" of title grants of lands issued by the treasurer-general during the year 1833 is found an entry of the following tenor:

On May 8 was delivered free of charge to the citizen Rafael Elias Gonzales, as provided by law, the title deed which, with date of December 25, was issued to said individual of four sitios of land for raising

cattle and horses, compriced in the place called San Rafael del Valle, situate in the jurisdiction of the presidio of Santa Cruz.

MENDOZA. [RUBRICA.]

And at the request of the interested party I give the present, at the city of Hermosillo, on the fourth day of the month of April, one thousand eight hundred and ninety-three.

V. AGUILAR.

Rafael Yzabal, constitutional vice-governor of the State of Sonora, in the exercise of the executive power.

I certify that the citizen Victor Aguilar is, as he styles himself, treasurer-general of the State and his the foregoing signature.

Hermosillo, April six, one thousand eight hundred and ninety-three.

RAFAEL YZABAL.

[SEAL.] RAMON CORRAL, *Sec.*

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, Nov. 27, 1893. Jas. H. Reeder, clerk. By R. L. Long, deputy.

(Endorsed:) U. S. Court of Private Land Claims. Juan Pedro Camou vs. United States. Copy translation. Certified copy. Folio 11, Toma de Razon. Ex. 4 A. William Herring.

113 PLAINTIFF'S EXHIBIT 5 A.

Copy of a deed of sale under a contract to resell, which the citizens Jose Juan, Jose Maria, and Manuel Elias and the mother of the same, Dona Guadalupe Perez de Elias, have executed in favor of the Senores Camou Hermanos (brothers), of the lands of San Pedro, embracing thirty-two square leagues, in the ranchos of Santa Barbara, Agua Preta, Naudesdaubacachi, Agua del Gato, Baltazar, and San Rafael del Valle.

In the city of Ures, on the 25th day of the month of July, 1862, before me, Ignacio Lopez, judge of first instance of the district, and the witnesses mentioned, appeared the citizens Jose Juan, Jose Maria, and Manuel Elias, and their mother, Dona Guadalupe Perez de Elias, and also the citizen Manuel Morales, of this vicinity, representing the Senores Camous Brothers, of Hermosillo, whose power he presented, and said that for their mutual interest they had agreed in the sale with a contract for reselling thirty-two square leagues of land, situated in San Pedro, continuing to the ranchos of Santa Barbara, Agua Prieta, Naidesdebacachi, Agua del Gato, Baltazar, and San Rafael del Valle, in the jurisdiction of Santa Cruz, Fronteras, and a part within the American lines, and for the sum of twelve thousand dollars, in silver or gold, payable within three years from the present date, with the conditions that either party, with common consent, may freely resell to another person or persons the said thirty-two square leagues at any time before the expiration of the said three years, and if during this time such sale be made the net profit ensuing therefrom shall be divided equally between the Senores Camous and Elias; but if the Senores Elias should desire to redeem the

property before the expiration of the said three years they shall pay to the said Camous Brothers the amount that they have disbursed, twelve thousand dollars, with interest thereon at the rate of one per cent per month, together with the taxes and costs of this sale, which they will pay as they have stipulated.

And so long as the sale is not made nor the three years have expired the Senores Elias shall remain in possession of the said thirty-two leagues, enjoying the products of the same; and for the purpose of carrying out this sale in due form of law the said Don Jose Juan, Don Jose Maria, and Don Manuel Elias and their mother, Dona Guadalupe Perez de Elias, hereby sell to the Senores Camous Brothers the thirty-two square leagues, which include the said ranchos of Santa Barbara, Agua Prieta, Naideersbidecachi, Agua del Gato, Baltazar, and San Rafael del Valle, for the sum of twelve thousand dollars, which they have decided to their entire satisfaction, under the express condition that if within the term of three years the vendors or their heirs should desire to redeem the same and shall return the price received, in silver or gold, with interest thereon at the rate of one per cent per month, then they shall be completely restored to the ownership of the property of which they now resume the possession, either party in the meanwhile being able, with the consent of the other side, to sell the said lands, in which
114 case the net profits ensuing from such sale shall be equally divided between the parties, the vendors satisfying the purchasers for the taxes and costs of sale with which they are now charged; but should the said time expire without the said price being returned, then the said Senores Camous will have the right to dispose of the said lands, as the true owners thereof, without the necessity of issuing citation or taking any proceedings in the matter whatever, the Senores Elias declaring that they have not sold or alienated the said thirty-two square leagues of land, and that the same is free from all responsibility and encumbrances, and as such they sell the same, with all the uses, servitudes, and other things thereunto belonging, which have pertained, or may pertain to them according to law, for the said sum of twelve thousand dollars. They also declare that the said sum of twelve thousand dollars is the just and true value of said property, the ownership of which they now denounce if within the term of three years they be not redeemed.

And, finally, they obligate themselves to warrant the title to said land; and in the same act Don Manuel Morales declared that the respective titles of said property of the ranchos of Santa Barbara, Agua Prieta, Naidiedaedebacachi, Agua del Gato, Baltazar, and San Rafael del Valle had been received by his principals, the Senores Camou Brothers, and said that he accepted this deed in all its parts, both parties obligating themselves, the Senores Elias with their own property and the Senor Morales obligating the property of his principals, the Senores Camou Hermanos, to the fulfillment of all that is contained in this writing—that is, the property they now have and such as they may hereafter acquire—declaring that no deceit or fraud has been used, and that should there have been, in a large or small amount, they make mutual donation thereof, firm and irrevocable, renouncing the time allowed them by law to make such claim. Thus the parties declared and signed, which parties

I certify that I know, reminding them that the instrument should be registered in the inspector's office of mortgages within the time required by law. The citizens Jose Maria Famago, Manuel Y. Mormier, and Hilario Rubio, residents of this city, being witnesses, which I attest.

IGNACIO LOPEZ.
JOSE JUAN ELIAS.
JOSE MA. ELIAS.
MANUEL ELIAS.
GUADALUPE PEREZ DE ELIAS.
MANUEL MORALES.

Instrumental witnesses:
JOSE MA. FAMAGO.
Instrumental witness:
MANUEL Y. MARTINEAU.
Instrumental witness:
HILARIO RUBIO.
Assist.:
ANTONIO TERAN Y PERALTA.
Assist.:
IGNACIO RIBES.

115 *Copy of the power.*

In the city of Hermosillo, on the 14th of July, 1862, before me, the notary, and the assistant witnesses, who are mentioned, appeared the Senores Camous Brothers, who are more than twenty-one years of age, residents of this place, who having presented a certificate showing that they had duly paid their taxes for the present month, to which I certify, returning said documents to them, who said:

That they give and confer all their power, ample and sufficient as the law may require, to Don Manuel Morales, of the town of Ures, he being also of lawful age, especially and particularly that he, in their names and representing their persons and rights, may accept and sign before a notary public or, in the absence of such officer, before a competent judge, the public instruments of writing that are to be executed in that city in favor of the parties giving this power by Don Manuel V. Escalante, son, as attorney of his wife, Dona Mariana Gandana, as a mortgage of the part represented by her in the hacienda of Santa Rita; Don Francisco Gandana, father, another instrument in writing, also a mortgage on the hacienda of San Felipe, and Don Jose Juan Elias, his wife, and mother and the other sons, an instrument of sale, with contract for resale of thirty-two leagues of land in San Pedro, the said Morales taking care that said instruments be drawn with all the formalities and solemnities necessary to give binding force and effect to the contracts therein set forth in respect to the times, amounts, and other conditions which they have communicated; on which basis the makers of this instrument will accept as firm and valid all that may be done under the same in their name, for the fulfillment of which obligating their present and future property as if it had by definitive sentence passed by a competent tribunal without appeal.

Thus executed and signed by the Senores Camous Brothers, whom I certify that I know; Don Jesus Lopez, Don Diomar Gonzales, and Don Agustin Munoz being witnesses, which I attest.

CAMOU BROTHERS.

Witness:
DIOMAR GONZALES.
Witness:
JESUS LOPEZ.
Witness:
AGUSTIN MUNOZ.

Signed before me,

FRANCISCO GOMEZ,
Notary Public.

I, the undersigned, notary public of the State and a resident of this city, was present at the execution of this instrument; in witness of which I give this original copy on paper of the second seal for the cur-
116 rent bieno, which I sign, the original from which this was taken remaining registered on paper of the 3d seal, upon which is noted the taking of this copy on the 14th of July, 1862, to which I certify.

In testimony of the truth a sign of the cross and at the foot of the same the initials F. G. M.

FRANCISCO GOMEZ MAGEN,
Notary Public.

Triple fees without the paper, $12.37.

MAGEN.

The foregoing was copied from the record on the day of its execution, with which it has been faithfully compared and corrected, as the same is found on the four foregoing leaves of paper for the current bieno, the first and last leaves being paper of the 1st seal and the intermediate leaves being paper of the 3d seal, which I authorize and sign with the assisting witnesses.

In testimony of the truth.

YGNACIO LOPEZ.

Assistant:
PERALTA.
Assistant:
IGN'O RITES.

OFFICE OF THE GENERAL TREASURY
OF THE STATE OF SONORA,
URES, *July 28th, 1862.*

Don Jose Juan Elias having paid the sum of six hundred dollars as a tax on the transfer of ownership caused by the sale of the lands of San Pedro for the sum of $12,000, let the administrations of San Ignacio and Arizpe be informed of the receipt in this office and in the gefatura de hacienda of the said sum, one-half in each, for the said tax for the entries that are to be made of the same in said offices, this entry being held as legal and sufficient before the authorities of the State.

P. A. DEL C. G. DE H.
G. V. SANDOVAL.

Don Manuel Morales, as attorney of the Senores Camou Brothers, of Hermosillo, to the court of first instance of this capital, Dr.

For the authorization of an instrument of sale under a contract of resale executed in favor of the Senores Camou Bros. *fy* the citizens Jose Juan, Jose Ma., and Manuel Elias and their mother, Dona Guadalupe Perez Elias:

Triplicate fees	$15.00
Copy	4.50
For two seals, 3d of	1.00
For one sheet paper, 1st seal, and another of 3d seal, used in the copy	29.50

Ures, July 25th, 1862.

IGNATIO LOPEZ.

117 Governor V. Sandoval, in charge of the gefatura of hacienda of the State of Sonora—

Certifies that there not being in the administration of sealed paper of this capital either of the classes required by articles 2, 3, & 4 of the law of the 16th of December last, the citizen Jose Juan Elias has deposited in this office $150 in money as a deposit of the product of the federal constitution, due from said individual upon the sum of $600, tax on the transfer of ownership by the sale which he has made, for the sum of $12,000, of the hacienda and lands of San Pedro to the Senores Camou Bros., said deposit being made under article 5th of the said law.

In witness whereof I give this in Ures on the 28th of July, 1862.

G. V. SANDOVAL.

ARIZPE, *August 19th, 1862.*

This instrument of sale of the lands of San Pedro by the Senores Elias to the Senores Camou & Brothers remains registered in the book of Toma de Razon, in this office, on folio 3d frente.

In witness whereof I authorize and sign, with the assistant witnesses, as judge "suptiute," in the absence of the judge "propietano," in the juzgado of this district.

Assistant:
TOMAS G. PICO.
Assistant:
GUILIBALDO JUERESA.

MAGDALENA, *August 25th, 1862.*

The instrument in testimony of the sale of the lands of San Pedro by the Senores Elias to the Senores Camou Bros. remains registered in the book of mortgages in this office.

In witness whereof I sign this with the assistant witnesses (on leaf 28).

MIGUEL RIBERA.

Ass't:
T. ORTEGOSA.
Ass't:
DOMINGO MENDOZA.

Filed in the office of the clerk, Court of Private Land Claims, Dec. 3, 1891. Jas. H. Reeder, clerk. By Irenio L. Chaves, deputy.

118 PLAINTIFF'S EXHIBIT 6.

1869, marzo 17, en Guaymas.

Informaciones de Jose Ma. Elias, Manuel Elias, Guadalupe Perez de Elias y Bernardina l. de Elias en el juzgado de distrito de Guaymas, de los terrenos de San Pedro, territorio de la Arizona, *en* favor de Camou Hermanos.

Año de (juzgado de distrito de Sonora) 1869.

Testimonio de una informacion practicada a solicitud de Don Juan P. Camou.

Juez de distrito de Sonora—

(Sig.) CIUDADANO JOSE BUSTAMANTE.

(Seal.) Segunda clase. (Seal.)

Republica Mexicana, para el bienio de mil ochocientos sesenta y ocho y sesenta y nueve 50 centavos.

Administra*c*ion subalterna de papel sellado, Guaymas.

Co. JUEZ DE DISRITO:

Juan P. Camou, socio principal y en representacion de la casa Camou Hermanos, ante V. bajo las protestas debidas espone: Que teni*e*ndo que adarar algunos hechas que tienen relacion con varios terrenos cuya mayor parte estan en la Arizona, territorio de los Estados Unidos, y la otra en la frontera de est*a* Estado, y los cuales compro la referida casa a Dona Guadalupe Perez, viuda del finado Don Rafael Elias, y a sus hijos Don Jose Maria, Don Manuel y Don Jose Juan Elias, se sirva con tal objecto citar a Don Jose Maria Elias para que diga por si y en representacion de su Senora Madre Dona Guadalupe Peres y hermano Don Manuel Elias, todo lo que sepa. relativo a las preguntas que se le haran. Como tambien a la Senora Dona Bernardina Lucero, esposa del finado Don Jose Juan Elias.

Certificaran sobre lo mismo el co. juez de distrito, Jose Bustamante y administrador de la aduana terrestre, Ciudadano Julian Escalante.

1st. Diga Don Jose Maria Elias por si y en representacion (cuya poder manifestara) de Dona Guadalupe Perez y Don Manuel Elias, que si es cierto y si se ratifica en la venta a la casa Camou Hermanos de los terrenos nominados "Naidebacadu," "Agua prieta" y "Santa Barbara," comprendido en un titulo, y los de San Rafael del Valle, jurisdiccion del presidio de Santa Cruz en otro, y por ultimo en un tercer titulo los comprendidos en los puestos nombrados Agua de Baltazar, la del Gato, la de Tomas Romero y la de las Mestenas.

2d. Diga el mismo como han adquirido esos terrenos si es per compra hecha a otra persona o per herencia paterna como unicas herederos.

3d. Diga si su padre y abuelo firmaba unas veces con solo el nombre de Rafael Elias y otras anteponiendo el nombre Jose o
119 posponiendo el apellido Gonzales y que no obstante todas esas variaciones siempre era la misma persona. Yguales preguntas se hara a la Senora viu*d*a Dona Bernardina Lucero y concluidas con los

respectivos certificados de los dos empleados a que ya se ha hecho referencia se me dara testimonio de todo ello.

Protestando como protesto no proceder de malicia y lo necesario, etc.

Guaymas de Laragoza, marzo dies y siete de mil ochocientos sesenta y nueve.

[L. S.] J. P. CAMOU. [L. S.]

Recibido en su fecha a las tres de la tarde. Para constancia lo anoto. Una rubrica.

Guaymas de Laragosa, marzo diez y siete de mil ochocientos sesenta y nueve.

Por recibido el presente escrito recibase la informacion y estiendause los respectivos certificados y concluido que sea desde el correspondiente testimonio como solicita. El juez de primera instancia en *fimcion*es del de distrito de Sonora, asi lo proveyo y firmo con los de asistencia.

JOSE BUSTAMANTE.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

Presente el Co. Jose Maria Elias a quien el co. juez le tomo la protesta de ley y bajo la cual ofrecio decir verdad en cuanto supiera y fuera preguntado; y siendolo per su nombre, edad, estado, ejercicio y vecindad, dijo llamarse como queda dicho, mayor de cuarenta años, casado, empleado y vecuno de este puerto. Preguntado sobre el contenido de los tres puntos del anterior escrito dijo que es cierto la renta de los terrenos que en el se mencionan a la casa de Camou Hermanos que representa actualmente el Senor Don Juan P. Camou como socio principal de ella, y cuya venta ratifica per si y a nombre de su Senora Madre Dona Guadalupe Peres y su hermano Don Manuel Elias, segun poder especial que exhibe y entrega para que se haga el uso que corresponde; y contesta al—

Segundo que todos esos terrenos los adquirieron per herencia de sus finados padres, siendo los unicos herederos, los que ya se han espresado; y en cuanto al tercer punto declara que tanto su abuelo como su padre tenian el mismo nombre Rafael Elias, que es cierto que algunas veces estos firmaban agregando el nombre de Jose y otro apellido de Gonzales; pero no obstante todas estas diferencias siempre era la misma persona, siendo costumbre de este pais hacerse asi muchas veces para distinguirse de otras personas que tienen el mismo nombre que son o no parientes. Concluida esta declaracion leida que le fue se ratifica en ella, firmando con*m*igo y los de asistencia.

BUSTAMANTE.
JOSE MARIA ELIAS.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

120 En la misma fecha me constitui con los de mi asistencia, en la casa de la Sonora Dona Bernardina Lucero, a quien le recibe la protesta debida y segun ella ofrecio decir verdad en todo lo que supiere y fuere preguntada; y siendolo per su nombre, edad, estado y vecindad, dijo lamarse, como se ha dicho, mayor de treinta años, viuda de su

finado esposo Don Jose Juan Elias y vecina de este puerto. Preguntada sobre el contenido de los puntos que contiene

[L. S.] [L. S.]

el anterior escrito dijo que es cierto la venta que hizo su finado esposa Don Jose Juan Elias, en union de su madre politica Dona Guadalupe Perez y cunados Jose Maria y Manuel Elias a la casa Camou Hermanos de los terrenos cuyos nombres se especifican en el ya referido escrito; tambien es cierto que esos terrenos los adquirieron las personas ya referidas de sus finados padres como unicos herederos; igualmente sabe que su abuelo y padre politico unas veces se firmaban solo con el nombre Rafael Elias y otras agregavan otro nombre de Jose y otras apellido de Gonzales, pero que siempre eran la misma persona. Con lo cual cree contestadas todas las preguntas, ratificando lo ya declarado, firmando con migo y los de mi asistencia.

BUSTAMANTE.
BERNARDINA L. DE ELIAS.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

Julian Escalante, administrador de la aduana terrestre en el Estado de Sonora.

Certifico en cuanto puedo, debo, y el derecho me permute, que *s* save per algunas personas la venta que los Senores Elias han hecho a la casa Camou Hermanos de los terrenos que se especifican en el escrito que se le presenta.

Tambien le consta que las personas que se *cun*meran en el espresado escrito son herederos legitimos de Don Rafael Elias, y de donde adquirieron esos terrenos; estiendo la presente a solicitud del interesado Don Juan P. Camou, en este puerto de Guaymas de Laragoza, a diez y siete de marzo de mil ochocientos sesenta y nueve, firmando a presencia del ciudadano juez de distrito.

JULIAN ESCALANTE.

Jose Bustamante, juez de primera instancia y de distrito por ministero de la ley.

Certifico que es cierto y positivo la venta de los terrenos que se espresan en el anterior escrito y que la hicieron a la casa de Camou Hermanos, Dona Guadalupe Perez de Elias y sus hijos Jose Maria Manuel y Jose Juan Elias ya finado; tambien le consta que estas personas son legitimas herederas del ya finado Rafael Elias y por ultimo sabe por las relaciones de amistad y parentesa que llevava por correspondencia epistolar con Don Rafael Elias, padre e hijo, que estos firmavan alguna
121 veces con solo el nombre y apellido que se ha espresado y otras agregavan el nombre Jose o el ap*p*elido Gonzales; pero era la misma persona,

[L. S.] [L. S.]

como podria verse de algunas cartas que aun conserva de esos mism*os* *sig*etos, estendiendo la presente certificacion a solicitud de Don Juan P.

Camou en este puerto de Guaymas de Laragoza, a los diez y siete dias del mes de marzo de mil ochocientos sesenta y nueve, que autorizo con los de mi asistencia.

JOSE BUSTAMANTE.

A.: EDUARDO MORALES.
A.: MARIANO GUERENA.

GUAYMAS DE LARAGOZA,
a *Marzo diez y siete de mil ochocientos sesenta y nueve.*

De *sete* conocimiento de todo lo actuado al co. promotor fiscal y con lo que diga se provena. El juez de distrito por ministerio de la ley, asi lo mando y decreto, firmando con los de asistencia.

JOSE BUSTAMANTE.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

En la misma fecha presente y anterior auto y enterado de ellos dijo que lo oye y fi*mia* conmigo y los de mi asistencia.

BUSTAMANTE.
J. P. CAMOU.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

CIUDADANO JUEZ DE DISTRITO:

El promotor fiscal que suscribe, ha cesaminado la anterior informacion, la cual encuentra arreglada a derecho, debiendosele dar entero credito a lo que esponen las personas que dedaran por la categoria y posesion que ocupan en los altos puestos publi*cas*. En cuanto al poder que ha presentado el Co. Jose Maria Elias por ser este especial y solo para el caso presente, debera agregarse al espediente, dandosele solo al interesado Don Juan P. Camou testimonio de el como todo lo demas actuado como lo ha solicitado.

Guaymas de Laragoza, marzo 17 de 1869.

Lic. JOSE MONTEVERDE.

GUAYMAS DE LARAGOZA,
Marzo diez y siete de mil ochocientos sesenta y nueve.

De acuerdo con lo pedido por el co. promotor fiscal unase al poder al espediente estendiendose testimonio de todo lo practicado en el como esta mandado en el primer auto y lo ha solicitado en su escrito el interesado Dn. Juan P. Camou. El juez de distrito de Sonora, asi lo proveyo y firmo con los de asistencia.

JOSE BUSTAMANTE.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

122 En la misma fecha se le notifico el auto anterior al co. promotor fiscal y enterado de el dijo que lo oye y firmo conmigo y los de asistencia.

BUSTAMANTE.
MONTEVERDE.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

Yncontinente estando presente Don Juan P. Camou se le dio conocimiento del
[L. S.] [L. S.]
auto que antecede el que impuesto de el dijo que lo oye y firmo conmigo y los de asistencia.

BUSTAMANTE.
J. P. CAMOU.

A.: MARIANO GUERENA.
A.: EDUARDO MORALES.

Doy fe haberse agregado el poder al espediento como esta mandado. Y para constancia lo rebrico. Una rubrica.

Segunda clase Republica Megicana—Para el bienio de mil ochocientos sesenta y ocho y sesenta y nueve—Cuatro Pesos.

Administracion principal de papel sellado, Sonora.—Administracion Subalterna de papel sellado, Guaymas.

En el pueblo de Tecoripa, distrito de Hermosillo, en el Estado de Sonora, a los trece dias del mes de marzo de mil ochocientos sesenta y nueve ante mi el ciudadano Jose Nido, juez local de este mismo puerlo, los testigos instrumentales que al fin se nombraran y los de mi asistencia con quienes actuo a falta de escribano, comparecieron la Sonora Dona Guadalupe Perez y su hijo Manuel Elias, mayores de edad, y despues de haber acreditado hallarse solventes con la hacienda publica e inscrito al segundo en al registro de Guardia nacional, dijeron que don y confieren todo su poder amplio y cumplido bastante cuanto en derecho se requiera mas pueda y deba valer al Co. Jose Maria Elias, hijo de la primera y hermano del segundo, tambien mayor de edad, vecino del puerto de Guaymas para que en su nombre, representando sus personas, derechos y acciones, se presente a la respectiva autoridad judicial a justificar y recificar la venta que con pacto de retrobendendo hicieron los otorgantes en union del finado Jose Juan Elias y Jose Maria Elias, hijos de la primera y hermanos del segundo, a favor de la casa de comercio establecida en Hermosillo de Camou Hermanos, cuya escritura de fecha 25 de julio de 1862 fue autorizada en Ures, capital del Estado, comprendiando los terrenos siguientes: Un titulo con cuatro sitios nombrados San Rafael del Valle, otro con diez un tercio sitios, con los nombres "Agua de Baltazar," la del Gato, la de Tomas Romero, y la de las Mestenas, y otro por ultimo, con diez y ocho sitios y doce y media caballerias de tierra que se denominan "Naidenibacachi," "Agua prieta" y "Santa Barbara," cuyos terrenos la mayor parte
123 estan en la Arizona, territorio de los Estados Unidos, y la otra en la frontera de este mismo Estado. Asi mismo dan amplias facultades e instrucciones suficientes para que puera hacer y dar todas las esplicaciones y aclaraciones que le pida o ecsija sobre el [L. S.] particular por Don Juan P. Camou, socio de dicha casa.

Y promoten tener por firme y valido cuanto en virtud del presente poder especial fuere hecho por su dicho hijo y hermano Jose Maria Elias, comprometiendose solemnemiente a estar y pasar por todo lo que por su

referido poderante dijere o hiciene. Asi lo dijern y firmaron, a quienes doy fe conozco, siendo testigos los Ciudadanos vecinos de este pueblo; Jose Maria Zuares, Santiago Lucero y Jose Maria Perez.

JOSE NIDO.
GUADALUPE PEREZ.
MANUEL ELIAS.

T.: JOSE MARIA ZUARES.
T.: SANTIAGO LUCERO.
T.: JOSE MARIA PEREZ.
A.: SANTOS MARINO.
A.: SANTIAGO LUCERO.

Sacose de su registro hoy dia de su otorgamiendo en dos fojas utiles de papel sello segundo, bienio corriente. Va fielmente copiado, corregido y concertado el que autorizo y firmo con los de mi asistencia en la forma ordinaria.

JOSE NIDO.

A.: SANTOS MARIN.
A.: JOSE MARIA ZUARES.

Sacose de la s diligencias originales que obran en el archivo de este juzgado de Distrito, de donde esta fielmente copiado y corregido en estas seis fojas de papel sello tercero, bienio corriente, que autorizo y firmo en Guaymas de Zaragoza a los diez y ocho dias del mes de Marzo de mil ochocientos sesenta y nueve, que autorizo y firmo con los de asistencia.

En testimonio de verdad.

[L. S.] (Sig.) JOSE BUNST.

A.: MARIANO GUERENA.
A.: (Sig.) EDO. MORALES.

Certifico que la firma que antecede es la misma que usa oficialmente y en lo particular el C. Juez de 1st Ynstancia.

Guaymas de Z., Marzo 22, 1869.

[S.] (Sig.) P. S. BUSTAMANTE.

(Prefectura del Distrito de Guaymas.)

CONSULATE OF THE UNITED STATES AT GUAYMAS, MEXICO,
March 23d, 1869.

I, A. Willard, consul of the United States of America for Guaymas and the dependencies thereof, do hereby certify that the signatures
124 of P. S. Bustamante, prefect of the district of Guaym..., and Jose Bustamante, judge of the district of Guaymas, both of Sonora, Mexico, to the document herewith annexed are their true and genuine signatures, and as such are entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed the seal of the consulate at Guaymas this day and year next above written.

[L. S.] (Sig.) A. WILLARD,
U. S. Consul.

(Endorsed:) Filed in the office of the clerk, court of private land claims, Dec. 3, 1891. Jas. H. Reeder, clerk, by Irenio L. Chaves, deputy.

STATE OF CALIFORNIA,
City & County of San Francisco, ss:

I, E. V. Sutter, a notary public in and for said city & county, duly commissioned and sworn, do hereby certify that the foregoing and within instrument is a full, true, & correct copy in every particular of an original document exhibited to me by Gustave Ris, esq., and by me compared with said original document on this thirteenth day of May, A. D. 1869.

In testimony whereof I have hereunto set my hand and affixed my official seal the day & year in this certificate above written.

[SEAL.] E. V. SUTTER,
Notary Public.

PLAINTIFF'S EXHIBIT 6 A.

March 17, 1869, in Guaymas.

Testimony of Jose Ma. Elias, Manuel Elias, Guadalupe Perez de Elias, and Bernardina L. de Elias, rendered in the district court of Guaymas, in reference to the lands of San Pedro, Territory of Arizona, in behalf of Camou Hermanos.

Year [SEAL.] 1869.

Certified copy of a judicial inquiry made at the request of Don Juan P. Camou.

JOSE BUSTAMANTE,
Judge of the District of Sonora.

(Seal.) Second-class paper. (Seal.)

Republic of Mexico, for the year- 1868 and 1869, 50 cents.

Office of sealed or stamped paper, Guaymas.

To the DISTRICT JUDGE:

Juan P. Camou, head member and attorney in fact for the house of Camou Brothers, before you, in due form of law show- that it being
125 necessary for him to explain certain facts which have connection with certain lands, a large portion of which are situated in Arizona, United States of America, and the other portion are lying in the frontier of this State, which lands were purchased by the said house of Dona Guadalupe Perez, widow of Don Rafael Elias (deceased) and her children, Don Jose Maria, Don Manuel y, Don Jose Juan Elias, that you may be pleased to summon the said Jose Maria Elias to appear and testify in his behalf and in representation of his mother, Dona Guadalupe Perez, and of his brother, Don Manuel Elias, all that he may know in reference to the questions which shall be propounded to him.

That the same be done as to Senora Dona Bernardina Lucero, wife of the deceased Jose Juan Elias, and be certified to by the citizen Jose Bustamante, district judge, and the collector of the inland custom-house, citizen Julian Escalante:

1st. Let Don Jose Maria Elias state for himself and in behalf of Dona Guadalupe Perez and Don Manuel Elias (producing the power of attorney) whether it is true that he confirms the sale made to the house

of Camou Brothers of the lands known by the names of "Naidebacachi," "Agua Prieta," and "Santa Barbara," embraced in a title, and the lands of San Rafael del Valle, in the jurisdiction of Presidio de Santa Cruz, embraced in another, and lastly in a third title those which are comprehended in those places known by the names of "Agua de Baltazar," "La del Gato," La de "Tomas Romero," and Las "Mestenas."

2nd. Let the same party state how they acquired those lands, whether by purchase made from another person or by paternal inheritance as sole heirs.

3d. Let him state whether his father and grandfather were in the habit of signing sometimes simply the name of Rafael Elias and at other times by placing *n*efore the name "Jose," or by postponing the surname Gonzales, and that notwithstanding these variations he was nevertheless the same person.

The same questions will be propounded to the widow, Dona Bernardina Lucero, and have certified copy of her testimony with the certificates of the two officers hereinabove referred to sent to me.

Guaymas de Zaragoza, March 17th, 1869.

J. P. CAMOU.

Received on the day of its date at 3 o'clock p. m.

In testimony whereof it was recorded. A signature.

GUAYMAS DE ZARAGOZA, *March 17th, 1869.*

On the receipt of the present petition let the inquiry be made and issue the proper certificate, and once done, have a certified copy made out and deliver it to the party as requested.

The judge of first instance of the district of Sonora thus ordered and signed with the attesting witnesses.

JOSE BUSTAMANTE.

Assistant witness:

MARIANO GUERENA.

Assistant witness:

EDUARDO MORALES.

126 Present, the citizen Jose Maria Elias, to whom the judge administered the oath required by law and who*m* promised to tell the truth in all matters known by him, and having been told to give his name, age, condition, profession, and place of residence, answered that his name is as hereinbefore stated, of forty years of age, married, employé, and a resident of this port.

Having been asked in regard to the contents of the three points of the preceding writing, he answered that it is true that a sale was made of the lands therein mentioned to the house of Camou Brothers, represented at present by Senor Don Juan P. Camou as the head man of said house, and which sale he confirms in his own behalf and in behalf of his mother, Dona Guadalupe Perez, and of his brother, Don Manuel Elias, in accordance with the special power of attorney, which he now produces and delivers in order that the proper use which may be required of *is* be made.

To the second question he answers—

That all the lands were acquired by right of inheritance from their deceased parents, they being the only heirs and entitled to the same.

To the third question he answers—

That his grandfather, as well as his father, had the same name, viz., Rafael Elias; that it is true that sometimes they would sign adding the name of Jose and the surname of Gonzalez; but notwithstanding these variations it was the same person, it being customary in this country to do so to distinguish one from another of the same name and which are or are not relatives.

This deposition having been read to him, was signed by him with me and the attesting witnesses.

BUSTAMANTE.
JOSE MARIA ELIAS.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDUARDO MORALES.

On the same date I called at the house of Senora Dona Bernardina Lucero with the attesting witnesses, and, after administering the oath to her, she was told to state her name, age, condition, and residence, to which she replied that her name is as already hereinbefore set forth; of thirty years of age; widow of Don Jose Juan Elias (deceased), and a resident of this port.

Having been asked in reference to the contents of the points embraced in the foregoing writing, she answered that it is true that the sale was made by her deceased husband, Don Jose Juan Elias, jointly with her mother-in-law, Dona Guadalupe Perez, and her brothers-in-law, Jose Maria and Manuel Elias, to the house of Camou Brothers of the lands named and specified in the hereinabove referred writing; that it is also true that those lands were acquired by the above-mentioned persons from their deceased parents as sole heirs; that she is aware that her grandfather and father-in-law were in the habit of signing sometimes
127 the name of Rafael Elias alone and at others would add the other name of Jose and still at others the surname of Gonzalez, but that notwithstanding these variations they were the same persons.

The questions having been answered, she signed this with me and the attesting witnesses.

BUSTAMANTE.
BERNARDINA L. DE ELIAS.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDUARDO MORALES.

Julian Escalante, collector of the inland custom-house, State of Sonora, hereby certifies that he is informed by several persons that a sale was actually made by Mess. Elias to the house of Camou Brothers of the lands described in the writing shown him. He is also informed that the parties mentioned in said writing are the lawful heirs of Don Rafael Elias and from whom said lands were derived, and this certificate is made at the request of the interested party, Don Juan P. Camou, in the port of Guaymas de Zaragoza, this the 17th of March, 1869, attesting it in the presence of—

JULIAN ESCALANTE,
District Judge.

Jose Bustamante, judge of first instance, &c., hereby certifies that it is true that a sale was actually made of the lands described in the foregoing writing to the house of Camou Brothers by Dona Guadalupe Perez de Elias and her children, Jose Maria, Manuel y Jose Juan Elias, now deceased. He is also informed that these parties are the lawful heirs of Rafael Elias, deceased, and finally that he is aware from the relations of friendship and those of a relative which he kept up by letter correspondence with Don Rafael Elias, father and son, that these parties on several occasions signed only their Christian and surnames hereinbefore given, and on other occasions they would add the name "Jose" or the surname "Gonzalez," though it was the same person, as the same can be seen by reference being made to several letters of these same persons now in his possession, and at the request of Don Juan P. Camou this certificate is issued at the port of Guaymas de Zaragoza on the 17th day of March, 1869, signing the same with the attesting witnesses.

JOSE BUSTAMANTE.

Attesting witness:
EDUARDO MORALES.
Attesting witness:
MARIANO GUERENA.

GUAYMAS DE ZARAGOZA, *March 17th, 1869.*

Let notice of all these proceedings be given to the citizen dis-
128 trict attorney and act according to his orders. Thus the district judge ordered and decreed, signing with the attesting witnesses.

JOSE BUSTAMANTE.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDUARDO MORALES.

On the same date, being present Don Juan P. Camou, he was notified of the proceedings in the foregoing writing, and being acquainted with it said that he had heard it read and signed the same with me and the attesting witnesses.

BUSTAMANTE.
J. P. CAMOU.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDUARDO MORALES.

To the citizen DISTRICT JUDGE:

The district attorney who subscribes this has examined the foregoing official inquiry and found it in accordance with law. He furthermore says that full faith and credit should be given to the testimony of the persons examined herein for their social standing and for the position which they occupy in public stations.

As regards the power of attorney which has been produced by the citizen Jose Maria Elias, as it is for the present case, it shall be annexed to

the expediente, giving to Don Juan P. Camou a certified copy of the same, with all other proceedings, as he has requested.

GUAYMAS DE ZARAGOZA, *March 17th, 1869.*

JOSE MONTEVERDE,
Attorney.

GUAYMAS DE ZARAGOZA, *March 17th, 1869.*

In accordance with what has been solicited by the citizen district attorney let the power of attorney be annexed to the expediente and have a certified copy of all the proceedings therein made out in conformity with the request of the interested party in his written petition. Thus the district judge of Sonora ordered it and signed with the attesting witnesses.

JOSE BUSTAMANTE.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDUARDO MORALES.

On the same date notice of the forgegoing writing was given to the citizen district attorney, and after becoming acquainted with the same said that he had heard it read and he signed it with me and the attesting witnesses.

BUSTAMANTE.
MONTEVERDE.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDUARDO MORALES.

129 Immediately afterwards, being present Don Juan P. Camou, notice was given him of the foregoing writing, and after being acquainted with the same, stated that he had heard it read, and he signed it with me and the attesting witnesses.

BUSTAMANTE.
J. P. CAMOU.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDUARDO MORALES.

I certify that the power of attorney was duly annexed to the expediente, as herein ordered.

In testimony whereof I sign this. (A signature.)

Second-class seal, Republic of Mexico, for the years 1868 and 1869, four dollars.

Revenue office of stamped paper, Guaymas.

In the town of Tecoripa, district of Hermosillo, State of Sonora, on the 13th day of March, 1869, before me, the citizen Jose Nido, local

judge of this same town, the attesting witnesses hereinafter named, and the assisting witnesses, who are acting with me in the absence of a notary public, personally appeared Senora Dona Guadalupe Perez and her son, Manuel Elias, both of lawful age, and, after adducing satisfactory proofs that they are not indebted to the public revenue and that the said Manuel Elias is duly enrolled as a member of the National Guards, said that they hereby give and confer full and ample power and authority in the premises into the citizen Jose Maria Elias, son of the party herein first named and brother of the second, of lawful age, resident of the port of Guaymas, that he may present himself in his own name, representing their persons, their rights, and acts, before the proper judicial authority to establish and confirm the sale made by the grantors jointly with Jose Juan Elias, deceased, and Jose Maria Elias, children of the party first herein named and brothers of the second, in favor of the commercial house of Camou Brothers, of Hermosillo, which deed of conveyance is dated July 25th, 1862, and was duly executed in Ures, capital of the State of Sonora, and embraced the following lands: A title embracing four sitios known by the name of San Rafael del Valle; another embracing ten and one-third sitios known by the names of "Agua de Baltazar," "El Gato," "Tomas Romero," and "Mestenas," and still another embracing eighteen sitios and twelve and one-half caballerias of land known by the names of Naidemibacachi, Agua Prieta, and Santa Barbara, the largest portions of which lands are situate in Arizona Territory, of the United States, and the other portion in the frontier of this State.

They likewise give and grant full and entire power and authority unto him that he may be able to make and give all the explanations which may be asked or demanded of him by Don Juan P. Camou, partner of said house, in reference to the subject-matter.

And they hereby promise to ratify and confirm all and whatsoever shall or may be lawfully done in the premises under or by virtue of these presents by her said son and brother, Jose Maria Elias, engaging themselves to ratify what their said attorney-in-fact may lawfully do or cause to be done.

In testimony whereof they signed these presents, being witnesses to the same the citizens residents of this pueblo, Jose Maria Zuares, Santiago Lucero, and Jose Maria Perez.

JOSE NIDO.
GUADALUPE PEREZ.
MANUEL ELIAS.

Witness:
JOSE MARIA ZAURES.
Witness:
SANTIAGO LUCERO.
Witness:
JOSE MARIA PEREZ.
Attesting witness:
SANTOS MARIA.
Attesting witness:
SANTIAGO LUCERO.

This was taken from the file on the day of its execution, and was written on two pages of stamped paper.

The foregoing is a faithful, true, and correct copy from the original, which I attest and sign, with the attesting witnesses, ij the ordinary way.

JOSE NIDO.

Attesting witness:
SANTOS MARIA.
Attesting witness:
JOSE MARIA ZUARES.

The foregoing was copied from the original proceedings, which are found in the archives of this district court, and it is a faithful and true copy, written on six pages of stamped paper, which I attest and sign in Guaymas de Zaragoza, on the 18th day of March, 1869, with the attesting witnesses.

In testimony whereof.

[SEAL.] JOSE BUSTAMANTE.

Attesting witness:
MARIANO GUERENA.
Attesting witness:
EDO. MORALES.

I hereby certify that the preceding signature of Jose Bustamante, judge of first instance, is his true and genuine signature, and as such is entitled to full faith and credit.

Guaymas de Z., Marzo 22 de 1869.

[SEAL.] P. S. BUSTAMANTE.

131 Here follow' certificate of A. Willard, American consul at Guaymas, certifying to the genuineness of the signature' of P. S. Bustamante and Jose Bustamante.

(Endorsed:) Filed in the office of the clerk, court of private land claims, Dec. 3, 1891. Jas. H. Reeder, clerk, by Irenio L. Chaves, deputy.

PLAINTIFF'S EXHIBIT 7.

Republica Mexicana. Officio publico del Escribano Serafico T. Robles.

Testimonio de escritura de disolucion de la sociedad "Camou Hermanos" otorgada por las miembros de ella, Senores Don Juan P., Don P. Andres, Don Pascual y Don Juan P. M. todos de appelido Camou.

(Eight stamps and four seals.)

Un sello que dice:

Tesoreria General del Estado de Sonora—Seccion de Recaudacion.

Certifico que el Senor Jose Camou hijo entero en esta oficina la suma de un mil ochocientos setenta y cinco pesos incluso el veinticinco por ciento federal, por derechos de una escritura que otorgaron los Sonores Juan Pedro, Pedro Andres y Juan Pedro M. Camou, disolviendo la sociedad "Camou Hermanos;" que dando convenidos en dividirse la propiedad raiz, semovientes, muebles, enceres y demas bienes pertenecientes

a dicha sociedad entre los Senores Juan Pedro y Pedro Andres por un valor de setenta y cinco mil pesos. En cuanto a los diez mil pesos en efectivo que recibio el Senor Juan Pedro M., no se cobraron derechos por considerarse que no causaron traslacion de dominio.

Hermosillo, Marzo vienticinco de mil ochocientos noventa.

V. AGUILAR,
Numero Quince.

En la ciudad de Hermosillo a los quince dias del mes de Marzo de mil ochocientos noventa, ante mi el infrascrito Escribano Publico y testigos instrumentales que al fin se expresaran, comparecieron los Senores Juan Pedro, Pedro Andres, Juan Pedro M. y Pascual, todos de apellido Camou, el primero y tercero vecinos del puerto de Guaymas, y el segundo y cuarto de esta ciudad, casados mayores de edad, habilespana contratar, comerciantes, a quienes doy fe conocer, exponiendo: que en veintidos del mes de Abril de mil ochocientos ochenta, celebraron un contrato de sociedad colectiva, bajo la razon social de "Camou Hermanos" por el termino de cinco anos; que el dia ocho del mes de Julio de mil ochocientos ochenta y cinco, o sea setenta y siete dias despues del vencimiento de las cinco anos antes expresados, se reduju a escritura publico una nueva convencion para renovar el anterior contrato, a cuyo acto se
132 le dio el nombre de proroga y cuya duracion debia ser hasta el veintidos de Abril de mil ochocientos noventa que por la presente ratifican en la forma mas arreglada a derecho; que el dia siete del presente mes, y por el acuerdo unanime de todos los socios se separo de la compana el Senor Don Pascual Camou haciendose constar tal acto por medio de escritura publica, cuyos extremos todos constran de una manera pormenorizada en los respectivos instrumentos que al efecto me fueron exhibidos, y que doy fe tener a la vista; el primero es una escritura publica otorgada con fecha veintidos de Abril de mil ochocientos ochenta en esta ciudad ante el Escribano Publico Nacional Matias Moran y registrada el veintisiete de Mayo del mismo ano; el segundo es una escritura tambien publica, otorgada en esta misma ciudad a los ocho dias del mes de Julio de mil ochocientos ochenta y cinco en este mismo oficio y registrada el veintinueve de Julio del propio ano, y el tercero es asi mismo una escritura publica otorgada en este oficio con fecha siete del mes que rige y registrada el dia catorce de dicho mes.

Continuaron exponiendo los tres primeros comparecientes, que por convenir a sus respectivos intereses, de su deliberada, libre y expontanea voluntad, han convenido en disolver, como disuelven, la sociedad expresada de "Camou Hermanos" que giro en esta capital y en el puerto de Guaymas con la razon social antes dicha, bajo las bases y condiciones constantes en las clausulas siguientes:

Primero. Queda disuelta al ser firmada la presente escritura, la sociedad colectiva que por primera vez fue escriturada en esta ciudad de Hermosillo el veintidos de Abril de mil ochocientos ochenta, y por segunda, el ocho de Julio de mil ochocientos ochenta y cinco, bajo la razon social de "Camou Hermanos."

Segunda. El socio Juan Pedro Camou recibe por toda su representacion en la extinguida sociedad "Camou Hermanos," con sus respectivos titulos las fincas rusticas y urbanas siguientes: el rancho conocido por

(One stamp and one seal.)

"San Rafael del Valle," compuesto de cuatro sitios para cria de ganado mayor y situado en el Territorio de Arizona, condado de Cachise, en los Estados Unidos de Norte America; la representacion de la casa en el rancho de "Saracache" y sus demasias y una peguena accion en el rancho de "Santo Domingo," ambos situados a immediaciones del pueblo de Cucurpe en el Distrito de Magdalena de este Estado, con los semovientes, enseres y demas existentes en dicho rancho de "Saracache," asi como todos los semovientes y enseres que la casa riene en el rancho de "Cabullona" a immediaciones del pueblo de Fronteras en el Distrito de Arizpe; y tambien el fierro de herrer de la compania; la representacion de la casa en el rancho de Nogales de Elias, que se encuentra dentro del Territorio de Arizona, Estados Unidos, en el condado de Pima; la representacion de la casa en el rancho de "La Cascarita," situado en el Distrito del Altar de este Estado; la que tiene la casa en los ranchos, llamados "Natora" y "Durazino" en el Distrito de Sanuaripa, Sonora; una labor en el pueblo de Suagui, conocida con el
133 nombre de "El Opojaqui" que la casa tiene en las partes compradada Don Manuel L. Martinez en los ranchos de la "Noria de Landavazo" y "Batobabi;" un terreno de campo conocido con el nombre de "Los Angeles" al poniente y como a dos leguas de esta ciudad entre el Chanate y los Bagotes que fue comprado a Don Francisco Robles; una casa en la villa de Magadalena situado en la plazo de armas, comprada a Don Pablo Fournier; la casa grande de altos que edifico la sociedad "Camou Hermanos" en la villa de Nogales, entre la calle de Elias y los terrenos del ferrocarril, con frente a la linea divisoria, y que ocupan actualmente como arrendatarios los Senores Horvilleur y Possehl; un solar en esta ciudad al norte y contigua a la casa de moneda, comprado a los herederos de Don Feliciano Arvizu; un solar al oriente y orillas del pueblo de Seris, conocido con el nombre de "El Gito," comprado a los mismas herderos de Don Feliciano Arvizu; dos solares en esta ciudad, en el barrio del Carmen, comprados a Don Manuel Antunez; la representacion que tiene la casa en la Fabrica de Hilados "Yndustria Sonoreuse" y adquirida por compra que de ella se hizo a la vinda de Don Fernando Cubillas, asi como la que tiene en la mina de Babicanora, Distrito de Arizpe. A mas recibe, la parte designada en la clausulo sexta de la presente escritura.

Tercera. El socio Pedro Andres Camou recibe por toda su representacion en la misma extinguida sociedad "Camou Hermanos," con sus respectivos titulos las propriedades siguientes:

La representacion que tiene la casa en la hacienda del "Chino Gordo" con todos sus terrenos de campo situado al nor este de esta capital sobre el camino de Ures y compuesta de cinco acciones troncales, el molino harinero existente en dicha hacienda, la labor del "Yaguaro" comprado a los herederos del finado Don Joaquin Ruiz las tierras de los Coronado enclavadas en la labor de "San Ysidero" las acciones de "Santa Gertrudis," los terrenos del "Oregano," la hacienda de "El Toro," y una pequena accion en los terrenos del rancho de las "Animas," todo con sus derechos de aguas servidumbres y demas anexidades, incluyendose asi mismo los enceres, existencias, semovientes y siembras actuales, segun inventario, con exclusion tan solo de las harinas que produzcan los trigos

actualmente en galera y el algodon que se acaba de cosechar en la labor de "Santa Margarita," y tambien recibe la hacienda conocida con el nombre de "San Jose del Claro," sita en jurisdiccion de Santa Ana, Distrito de Magdalena, compuesta de varias labores y con todas sus anexidades.

A mas recibe tambien la parte designada en la clausula sexta de la presente escritura.

(One stamp and one seal.)

Cuarta. Las anteriores asignaciones han sido valorizadas por los tres primeras socios comparecientes y de comun acuerdo en la cantidad de setenta y cinco mil pesos, fraccionada de la siguiente manera; veinticinco mil pesos corresponden a la representacion del socio Juan Pedro
134 Camou, y los cincuenta mil pesos restantes a la del socio Pedro Andres Camou, cuyas asignaciones estan en un todo arregladas a los convenios celebrados entre las referidos socios.

Quinta. El socio Juan Pedro M. Camou recibe por toda su representacion en la referida compania, la suma de diez mil pesos en moneda corriente de plata, quedando por este hecho excento de toda responsabilidas, sea la que fuere, para la compania disuelta y para sus consocios, quienes asumen la resultante de la escritura de separacion del socio Pascual Camou, otorgada el dia siete del corriente mes y de la que antos se ha hecha referencia.

Sexta. Los socios Juan Pedro y Pedro Andres, cobraran lo que se deba a la sociedad disuelta, diviendose por mitad su resultado; y pagaran en los terminos convenidos los creditos pasivos que gravitan sobre ella.

Septima. Los socios Juan Pedro, Pedro Andres y Juan Pedro M. renuncian el termino de cinco anos que determina al articulo mil cuarenta y cinco del Codigo de Comercio en su fraccion primera para la deduccion de acciones entre si y contra la sociedad, cuyo termino lo dan por vencido.

Octavo. Asi mismo renuncian respectivamente la eviccion a que se refiere el articulo cuatro mil ciente doce del Codigo civil y el derecho consignado en el dos mil del mismo Codigo.

Novena. Tambien renuncian el beneficio que otorga el articulo cuatro mil ciento viente del Codigo civil, para pedir caucion sobre la responsabilidad que pueda resultar con motivo de los bienes divididos y le demas que el mismo articulo determina.

Decima. Los referidos socios declaran que en el presente caso de disolucion y asignaciones hechas no hay la lesion prevista por el articulo mil setentientos setenta y dos del Codigo civil; pero si la hubiese renuncian los cuatro anos que para la rescicion prepija el mil setecientos setenta y cuatro del mismo Codigo.

Undecima. El ex-socio Pascual Camou manifiesta que si bien es cierto que en la escritura de su separacion que ha exhibido, no aparece renuncia de los beneficios determinados en las clausulas septima, octava, novena, y decima de la presente escritura, lo es asi mismo que esta conforme con dicha renuncia; que por tal motivo la hace suya y la da como existente y expresada en su antes referida escritura.

Clausula adicional. Como los semovientes que existen en la hacienda del "Chino Gordo" asignados en la presente escritura al socio Pedro

Andres Camou, estan marcados con el fierro de la compania que en la clausula segunda asigno al socio Juan Pedro, es convendio que los primeros, previa venta, sean mancados con el fierro que a bien tenga usar el referido Senor Don Pedro Andres.

Yleida que les fue la presente escritura a los cautro Senores comparecientes, por ante los testigos instrumentales que lo fueron los Senores Don Antonio Calderon y Don Rodolfo Rodriguez, majores de edad y de esta vecindad, estuvieron conformes con su tenor y la firmarom lo mismo que los expresados testigos. Doy fe.—Anadio el Senor Don Pascual Camou; que los trienta mil pesos que le quedaron debiendo los Senores Don Juan Pedro, Don Pedro Andres y Don Juan Pedro M., y que se obligaron a pagarle dentro de un ano segun la escritura fecha siete del corriente mes en que se separi de la sociedad "Camou Hermanos," los tiene recibidos ya en moneda corriente de plata; y por no ser de presente la entrega del dinero renuncia la excepcion que podia oponer con arreglo al articulo setenta y ocho del Codigo de procedimientos, y el termino fijado en el mil doscientos dos del Codigo civil.

(One stamp and one seal.)

J. P. CAMOU.
P. A. CAMOU.
PASCUAL CAMOU.
J. P. M. CAMOU.

Testigo:
ANTONIO CALDERON.
Testigo:
R. RODRIGUEZ.

SERAFICO T. ROBLES.

Un sello que dice: Serafico T. Robles—Escribano Publico—Estado de Sonora.

Es la primera copia expedida hoy tres de Abril del mismo ano de su otorgamiento en cinco fojas de papel del tamano comun con las correspondientes estampillas canceladas, quedando en el protocolo las de la Renta Ynterior por el medio por ciento sobre la cantidad que se versa en esta escritura.—Tachado de.—No vale—Entre Lineas en—Vale—Corregido.

[SEAL.] SERAFICO T. ROBLES.

HERMOSILLO, *Abril cinco de mil ochocientos noventa.*

Se inscribio la presente escritura en el Registro Publico de este Distrito a folios ciento sesenta y sesenta y siete del libro correspondiente a la seccion primera.

Y para constanera se sienta esta diligencia que firmo con Testigos de asistencia.

[SEAL.] D. GONZALES.

A.: A. URUCHURTA.
A.: G. MONTEVERDE.

URES, *Abril catorce de mil ochocientos noventa.*

A fojas siete, ocho, nueve, diez y once del libro respectivo del Registro Publico queda copiada integra la presente escritura. Doy fe.

[SEAL.] J. A. PUYOL.

A.: M. A. BANIOS.
A.: LUIS V. ESCALANTE.
[SEAL.]

MAGDALENA, *Abril veintitres de mil ochocientos noventa.*

Hoy quedo inscrito este instrumento desde la vuelta de la foja
136 treinta y una y la treinta y seis fronte en la seccion primera del Registro Publico que es a cargo de este Juzgado.

Lo que autorizoro firmo con testigos de asistencia.

JOSE L. LOPEZ.

A.: ERACLIO MORENO.
A.: S. R. CAMPBELL.
[SEAL.]

ALTAR, *Mayo tres de mil ochocientos noventa.*

(One stamp and one seal.)

A las cuatro de la tarde del dia hoy, y baji el numero uno se inscribio esta escritura desde la foja dos frente hasta la seis vuelta, libro respectivo del Registro Publico que es a cargo de este Juzgado.

Lo que autorizo y firmo por ante testigos de asistencia.

JOSE W. MENDEZ.

A.: FRANCO. R. CAMPUYANA.
A.: MANUEL QUIROS M.

Filed in the office of the clerk, Court of Private Land Claims, Dec. 3, 1891. Jas. H. Reeder, clerk; by Irenio L. Chaves, deputy.

PLAINTIFF'S EXHIBIT 7 A.

Mexican Republic. Public office of the notary public, Serafico T. Robles.

Authentic copy of the contract for the dissolution of the copartnership styled "Camou Hermanos," executed by the members thereof, to wit, Messrs. Juan P., P. Andres, Pascual, Juan P. M., all of them surnamed Camou.

One seal that says: Treasury general of the State of Sonora, collection section.

I certify that Mr. Jose Camou, jr., paid into this office the sum of one thousand eight hundred and seventy-five dollars, including the twenty-five per centum of the Federal duty, as dues on a certain instrument executed by Messrs. Juan Pedro, Pedro Andres, and Juan Pedro M. Camou, dissolving the partnership of "Camou Hermanos," thereby

agreeing to segregate the real estate, live stock, personal property, choses in action, and other property belonging to the said copartnership between Messrs. Juan Pedro and Pedro Andres for the sum of seventy-five thousand dollars.

With respect to the ten thousand dollars in cash received by Juan Pedro M. no dues were collected, as they were not in consideration of any transfer of real estate.

Hermosillo, March the twenty-fifth, of eighteen hundred and ninety.

V. AGUILAR, *Number Fifteen.*

In the city of Hermosillo, on the fifteenth day of the month of March, eighteen hundred and ninety, before me, the undersigned,
137 notary public, and attesting witnesses herein mentioned below, appeared Messrs. Juan Pedro, Pedro Andres, Juan Pedro M., and Pascual, all surnamed Camou—the first and third residents of the port of Guaymas, and the second and fourth of this city, married, of full age, capable of contracting, merchants—whom I certify are personally known to me, declared:

That on the twenty-second day of the month of April, eighteen hundred and eighty, they entered into a contract of copartnership, under the style and name of "Camou Hermanos," for the period of five years; that on the eighth day of the month of July, eighteen hundred and eighty-five—that is, seventy-seven days after the lapse of the five years before mentioned—a new public instrument was executed to renew the previous contract, to which was given the character of an extension to April the twenty-second, eighteen hundred and ninety, the same which they by these presents ratify and confirm in due form of law; that on the seventh day of the present month, and with the unanimous consent of all the copartners Mr. Pascual Camou retired from the partnership, which fact was carried out by means of a duly executed public instrument, the conditions of which, severally itemized, are set forth in the respective documents, all of which were exhibited to me and which I certify to have now before me.

The first is a public instrument, dated April twenty-second, eighteen hundred and eighty, executed in this city before Matias Moran, a national notary public, and recorded on the twenty-seventh of May of the same year; the second is also a public instrument, executed in the same city on the eighth day of the month of July of eighteen hundred and eighty-five, in this very office, and recorded on the twenty-ninth day of July of the same year, and the third is likewise a public instrument, executed in this office, dated the seventh of the current month, and recorded on the fourteenth of said month.

The three first exponents continued to state that, it being convenient to their respective interests, by their deliberate, free, and spontaneous will they have agreed to dissolve and they do dissolve the copartnership styled "Camou Hermanos," which carried on business in this city and in the port of Guaymas under the name and style aforesaid, upon the basis and conditions contained in the following clauses:

First. The copartnership under the style and name of "Camou Hermanos," that in the first instance was formed in this city of Hermosillo on the twenty-second of April, eighteen hundred and eighty, and on a

second occasion on the eighth of July of eighteen hundred and eighty-five, is dissolved by the execution of this instrument.

Second. The copartner Juan Pedro Camou receives as his entire share of the dissolved copartnership, with their corresponding titles, the following real estate in both country and city property, to wit: The ranch known as "San Rafael del Valle," containing four sitios for cattle, and situate in the Territory of Arizona, county of Cochise, in the
138 United States of America; the part belonging to the copartnership in the ranch of "Saracache" and its "demacias" and a small share in the ranch of "Santo Domingo," both situate in the neighborhood of the town of Cucurpe, in the district of Magdalena, of this State, with the live stock, appurtenances, and other existing property in said ranch of "Saracache," and also all the live stock and existing personal property the copartnership has in the ranch of "Cabullona," in the neighborhood of the town of Fronteras, in the district of Arispe, and also the branding iron of the copartnership; the part belonging to the copartnership in the ranch of Nogales de Elias, located within the Territory of Arizona, United States, in the county of Pima; the share which the firm has in the ranch of "La Cascarita," situate in the district of Altar, of this State; the part which the firm has in the ranch called "Natora" and Durasno, in the district of Sahuaripa, Sonora; the farm in the town of Suagui, known by the name of "El Opajaqui," which the firm owns, subject to municipal rents; the right which the firm has in the parts bought from Mr. Manuel L. Martines in the ranch of the "Noria de Landavazo" and "Batobabi;" a piece of country property known by the name of "Los Angeles," to the west and about two leagues from this city, between El Chanate and Los Bagotes, which was bought of Mr. Francisco Robles; a house in the town of Magdalena, situated facing the "Plaza de Armas," bought of Mr. Pablo Tournier; the large two-story house built by the firm "Camou Hermanos" in the town of Nogales, between Elias street and the railroad lands, facing the divisory line, and which is now occupied as tenants by Messrs. Horvilleau and Posschl; one lot in this city towards the north, contiguous to the mint, bought of the heirs of Mr. Feliciano Arvisu; one lot on the east side in the suburbs of the "Pueblo de Seris," known by the name of "El Gito," bought of the same heirs of Mr. Feliciano Arvisu; two lots in this city, in the ward of Carmen, bought of Mr. Manuel Srvisu; the share which the firm has in the manufacturing company called "Yndustria Sonorence" and acquired by purchase made from the widow of Mr. Fernando Cubillas, as well as the share it has in the mine of Babicanora, district of Arispe. Besides, he receives the part designated in the sixth clause of the present instrument.

Third. The copartner Pedro Andres Camou receives as his entire share in the same dissolved copartnership of ("Camou Brothers") "Camou Hermanos," with their respective titles, the following property:

The share which the firm has in the "Chino Gordo," with all the lands belonging to it, situated to the northeast of this capital, on the road to Ures, and composed of five shares of original inheritance, the flour mill found in said property, the farm lands of "Zaguaro" bought of the heirs of Mr. Joaquin Ruiz, the lands of "Coronado" included in the farm of "San Ysidro," the shares in "Santa Gertrudis," the lands of

"Oregano," the property of "El Toro," and a small share in the lands of the ranch of "Las Animas," all with their water rights, servitudes, and other things annexed thereto, including likewise all existing property, live stock, and growing crops now found therein according to
139 inventory, excepting only the flour resulting from the wheat at present found in the storehouse and the cotton that has just been raised in the farm of "Santa Margarita." He also receives the property known by the name of "San Jose del Claro," situate in the jurisdiction of Santa Ana, district of Magdalena, consisting of several farms, with all their appurtenances.

Moreover, he receives also the part designated in the sixth clause of the present instrument.

Fourth. The foregoing apportionments have been appraised by the three first copartners, deponents, and by common consent in the sum of seventy-five thousand dollars, divided in the following manner: Twenty-five thousand dollars correspond to the share represented by the copartner Juan Pedro Camou and the fifty thousand dollars remaining to that of the copartner Pedro Andres Camou, which apportionments are fully in accordance with the agreements executed between the said partners.

Fifth. The copartner Juan Pedro M. Camou shall receive as his entire apportionment in the said copartnership the sum of ten thousand dollars in current silver money, by these presents exempt from all responsibility, be that what it may, in regard to the dissolved partnership and the copartners thereof, who assume the liability of the agreement of separation with the copartner Pascual Camou, executed the seventh day of the current month, to which reference was made heretofore.

Sixth. The copartners Juan Pedro and Pedro Andres shall collect the debts due to the dissolved copartnership, dividing between themselves, half and half, the result, and they shall pay in the terms agreed upon the credits standing out against it.

Seventh. The copartners Juan Pedro, Pedro Andres, and Juan Pedro M. renounce the period of five years provided in article one thousand and forty-five of the code of commerce, in its first section, for the readjustment of shares between themselves and against the copartnership, which period they consent to consider as expired.

Eighth. In like manner they each individually renounce the readjustment referred to in article four thousand one hundred and twelve of the civil code and the rights contained in that of two thousand of the same code.

Ninth. They also renounce the benefits granted by article four thousand one hundred and twenty of the civil code, to ask for indemnity for the responsibility that may result on account of the distributed property or other things provided for in the same article.

Tenth. The said copartners declare that in the present act of dissolution and apportionment made does not exist the undervaluation foreseen in article one thousand seven hundred and seventy-two of the civil code; but if it does exist, they renounce the four years allowed by article one thousand seven hundred and seventy-four of the same code for rescission.

Eleventh. The ex-copartner, Pascual Camou, declares that if it is
140 true in the agreement of his separation which he has exhibited here there does not appear any reference to the benefits expressed

in clauses seventh, eighth, ninth, and tenth of the present contract, nevertheless he assents to said renunciation and by these presents makes the same his own and accepts it as existing and expressed in his foregoing referred contract.

Additional clause. Inasmuch as the live stock existing in the property of "Chino Gordo" apportioned by the present contract to the copartner Pedro Andres Camou are marked with the copartnership brand, which in the second clause was assigned to the partner Juan Pedro, it is agreed that the first, being previously vented, shall be branded with such mark as the referred Mr. Pedro Andres may wish to use.

And the present writing having been read to the four gentlemen, exponents herein, before the witnesses to this instrument, the same being Mr. Antonio Calderon and Mr. Rodolfo Rodriguez, of full age and residents of this city, they were satisfied with its tenor and they signed it, the same as the witnesses aforesaid. I attest.

Mr. Pascual Camou added that the thirty thousand dollars remaining due to him by Mr. Juan Pedro, Pedro Andres, and Juan Pedro M., and which they bound themselves to pay in one year from date, according to the agreement dated the seventh of the current month, when he effected his separation from the copartnership of "Camou Hermanos," he has already received them in current silver money; and the money not being paid in the presence (of the notary), he waives the exception he could take according to article seventy-eight of the code of procedure and the term fixed by that of one thousand two hundred and two of the civil code.

J. P. CAMOU.
P. A. CAMOU.
PASCUAL CALOU.
J. P. M. CAMOU.

Witness:
ANTONIO CALDERON.
Witness:
R. RODRIGUEZ.

SERAFICO T. ROBLES.

A seal that says: Sarafico T. Robles, notary public, State of Sonora.

It is the first copy issued to-day, April the third, of the same year of its execution, in five leaves of paper of the usual size, with the corresponding stamps canceled, there remaining on the matrix those stamps of internal revenue for one-half of one per cent for the sum contained in this instrument.

SERAFICO T. ROBLES. [NOTARY SEAL.]

[Seal State of Sonora, Court of 1st Instance, Dist of Hermosillo.]

HERMOSILLO, *April fifth, eighteen hundred and ninety.*

The present document was inscribed on the public records of this district on page one hundred and sixty and seventy-seven*ty* in the book belonging to section first.

141 In witness whereof I sign this statement with the assistant witnesses.

D. GONZALES.

A.: A. URUCHURTO.
A.: G. MONTEVERDE.

[Seal court of 1st instance of Ures.]

APRIL FOURTEENTH, EIGHTEEN HUNDRED AND NINETY.

On page' seven, eight, nine, ten, and eleven of the respective book of the public record is catered in full the present instrument.

I attest.

J. D. PUJOL.

A.: M. A. BARRIOS.
A.: LUIS V. ESCALANTE.

[Seal court of 1st instance, district of Magdalena.]

MAGDALENA, *April twenty-three, of eighteen hundred and ninety.*

This instrument was inscribed to-day from the back of page thirty-one to the front part of page thirty-six, in section first of the public record, under charge of this court.

Which I certify to and sign with the assisting witnesses.

JOSE L. LOPEZ.

A.: ERACLIO MORENO.
A.: S. M. CAMPBELL.

[Seal court of 1st instance, district of Altar.]

ALTAR, *May third, of eighteen hundred and ninety.*

At four o'clock in the afternoon of to-day, and under number one of records, this instrument was registered from the front face of page two to the back of page six in the proper book of public record under charge of this court.

Which I certify to and sign before the assistant witnesses.

JOSE M. MENDEZ.

A.: FRANCO. R. CAMPUZANO.
A.: MANUEL QUIROS M.

Filed in the office of the clerk, Court of Private Land Claims, Dec. 3, 1891. Jas. H. Reeder, clerk, by Irenio L. Chaves, deputy.

142 PLAINTIFF'S EX. 8.

[SEAL.]

Año de 1891.

Testimonio del titulo del rancho de "San Pedro," sito en Fronteras, distrito de Arispe.

(One stamp and one seal.)

Una estampilla de cincuenta centavos devidamente cancelado.

HERMOSILLO, *Julio 23 de 1891.*

Senor BME. ROCHIN, *Presente.*

MIX SOR. MIO: Por la presente doy y confiero a Ud. poder especial, amplio, cumplido y bastante cuanto en derecho se requiera mas pueda y

deva valer para que en representacion de los Senores Manuel y Jose Ma. Elias como coopropietarios del rancho de San Pedro y de quien estoy autorizado segun las cartas que adjunto, se presente ante quien sea necesario para la compulsa de testimonio del citado rancho de "San Pedro," sito en Fronteras, distrito de Arizpe. Con fio en que aceptara mi poder con cuantas facultades sean necesarias para el caso, estando yo y pasando por cuanto haga en este particular. Sin otro asunto puedo de Ud. acmo. S. S.

J. P. M. CAMOU. [RUBRICA.]

TOMBSTONE, *Junio 18, 1891.*

Sor. D. VICTOR AGUILAR, *Hermosillo.*

MUY Sr. MIO: El Senor Antonio Camou ha solicitado de mi como coopropietario del rancho de San Pedro; permiso para sacar copia certificado del citado rancho y de la primitiva mensura, con el fin de justificar en los V. E. cual es el mojon del norte del referido rancho, con motivo de que la medida sur del rancho uvicado dentro de la linea Americana "San Rafael del Valle" de su propiedad colinda con el mojon del ya referido San Pedro; en consecuencia concedo el permiso referido; el Sor. Camou pagara los gastos necesarios. Sin otro asunto me ofrezco de Ud. su muy atento y S. S.

MANUEL ELIAS. [RUBRICA.]

Jose Maria Elias.

SAN PEDRO, *Julio 19, 1891.*

Senor D. VICTOR AGUILAR, *Hermosillo.*

ESTIMADO AMIGO: El Senor Don Juan P. Camou, amigo n. desea sacar copia del titulo viejo de este rancho a fin el de cerciorarse de saber el punto fijo a donde n. titulo antiguo rezaban sus linderos rumbo al norte, de donde comenzaban los medidas del rancho de San Rafael del Valle,
cuyo titulo fue antes de nosotros y hoy pertenece a dicho Senor
143 Camou. Por mi parte no creo perjudicarme en nada la aclaracion que dicho Senor Camou desea hacer.

Sin otro asunto me repito suyo amigo y S. S.

JOSE MA. ELIAS. [RUBRICA.]

Una estampilla de cincuenta centavos devidamente cancelada.

Senor TESORERO GENERAL:

Bme. Rochin, empleado de esta oficina, ante Ud. respetuosamente expongo; que soy apoderado especial de los Senores Manuel y Jose Ma. Elias, para pedir la compulsa de testimonio del titulo del rancho de "San Pedro" sito en Fronteras, distrito de Arizpe, y como la matriz de encuentra en el archivo de la tesoreria que es a su digno cargo. A Ud. pido y suplico se sirva ordenar se me compulse la copia autorizado que solicito, pagando todos los gastos que se me impongan en la dicha expedicion. Protesto lo necesario S.

Hermosillo, Julio 23 de 1891.

BME. ROCHIN. [RUBRICA.]

Un sello que dice: Tesoreria General del Estado de Sonora, julio 23, 1891.

HERMOSILLO, *Julio veintitres de mil ochocientos noventa y uno.*

Como se pide, busquese en el archivo el titulo de que se hace referencia y compulsese la copia autorizada que se solicita.

El tesorero general lo mando y firmo.

V. AGUILAR. [RUBRICA.]

Vale para el bienio de 1820 y 1821. Rubrica. Sello tercero. Dos reales.

(One stamp and one seal.)

Anos de mil ochocientos catorce y quince. Un sello que dice: Fernando VII. D. G. M. Anos de 1816 y 1817. Otro sello que dice: Fernando VII. D. G. M. Anos de 1818 y 1819. Dos reales. Senor Gobernador Yntendente. Don Jose de Jesus Perez, vecino de esta capital.

Ante V. S. conforme a derecho y con arreglo a las reales ordenanzas de campo, leyes, sanciones, y pracmaticas, que tratan sobre le realengo y abadengo con que S. M. (D. L. G.) ampara a sus vasallos, como regalia de su real patrimonio, parezco y digo que en atencion a disputar de algunos bienes castrences y adventicios, sin *b*ener en propiedad un fundo en que uvicarlos y centruarlos, ocurro a la superioridad de V. S. (Previa licencia paterna) para que con arreglo a lo prevenido en las leyes nacionales y dispuesto por real cedala de 14 de fe*u*rero de 1805; sea havido por registrado el parage despollado del rio abajo de San Pedro, sito en esta provincia rumbo al Norte frontera enemiga inmediato al desamparado de las Nutrias; en cuya virtud protesto entrar en composicion con S. M. (D. L. G.) satisfaciendo la cuato opencion de su fincamiento; en real derecho de media annata con lo demas que sea
144 necesario, pues asi es de rigurosa justicio con merito a lo expuesto. En hal concepto, suplico a V. S. libre comision para que se practiquen las diligencias respectivos de vista de ojos, reconocimiento de terreno, agrimensura, valuo, pregones, posecion y remate de los cuatro sitios que se me mediran en figura cuadrada o cuadrilonga segun la longitud o ampliacion del terreno y su rumbo que en tales terminos. O. V. S. suplico difiera a mi justa solicitud en que recibire gracia, costas protesto y lo necesario, &c.

JOSE DE JESUS PEREZ. [RUBRICA.]

ALAMOS, *Marzo 12 de 1821.*

Por presentado y admitido sin perjuicio de tercero: Don Nazario Gomez, procedera a la medida, valuacion y demas diligencias de estilo, citando a los colindantes, y medara cuenta concluidas que sean para lo demas que haya higar.

CORDERO. [RUBRICA.]

FRONTERAS, *28 de Abril de 1821.*

Por recibido del apoderado D. Rafael Salas el antecedente superior decreto de comision en cuya virtud pasese por mi el oficio de impartimiento y pase y auxilios necesarios, que debe ampliar el alcalde constitucional de este partido para proceder a la mensura. Don Nazario

Gomez, juez comisionado a si lo decrete, mande y firme por ante los de mi asistencia segun derecho doy fe.

NAZARIO GOMEZ.

A.: LUCIO GOMEZ.
A.: PULGENCIO FELLES. [RUBRICAS.]

Con fecha 29 del corriente se paso el oficio que se previene en la diligencia que antecede y para constancia puse esta que rubrique—rubrica. En 30 del corriente mes y ano contesto el alcalde constitucional Don Miguel Teran, oficio de negativo de los auxilios impartidos por este juzgado, en cuya virtud atento a pedir la remision de espedientes a su poder en los terminos siguientos (entre otras cosas) dice: Espero de Ud. me los remitira para dar el debido cumplimiento a los superiores decretos, pues no puedo dar el pase para que estos sean mensurados por otros si no es por mi, quedando por esto obligado a dar mis descargos siempre que por el superior se me pidan los motivos que tuve para ello los que reservo para entronces con lo que contesto a los cuatro de V. en tal concepto mediante su responsabilidad pasele el presente expediente

(One stamp and one seal.)

cobrando recibo para el resguardo de este juzgado y por el presente asi lo decrete y firme segun derecho doy fe.

NAZARIO GOMEZ.

A.: LUCIO GOMEZ.
A.: FULGENCIO FELLES. [RUBRICAS.]

Auto de obedecimiento.

FRONTERAS, *3 de Mayo de 1821.*

Por recibido el antecedente superior decreto entregado o este juzgado por Don Nazario Gomez, en cuya virtud y habiendoseme
145 presentado la persona de Don Rafael Salas poderante del interesado Don Jose Jesus Perez, cuyo poder doy fe haber visto; dije se proceda a la agrimensura a cuyo efecto nombrese Promotor fiscal, Yuxptos, medidores, valuadores y ministro apuntador de vientos y como en la persona de Don Lucio Gomez, Don Ramon Benites, Don Teodoro Aros y Don Luis Aragon residen las circumstancias de idoneidad, partica pericia y conocimiento, he venido en nombrar como nombro al primero de Promotor fiscal, para el reconocimiento de terrenos, vista de ojos y pedimientos a beneficio de Hacienda publica; al segundo y tercero que lo son Benites y Aros para valuadores y al cuarto Don Luis Aragon para apuntador de rumbos; en tal concepto notifiqueseles sus encargos para que aceptados se les furamente y divierna y conforme a derecho y con lo que resulte preceder a lo mas que en justicia corresponda.

Yo Don Miguel Teran, Alcalde Constitucional de este Partido y Juez Agrimensor en este registro, asi lo decrete, ande y firme en la forma ordinaria por derecho doy fe.

MIGUEL TERAN.
JULIAN MONTANO. [RUBRICAS.]

Yncontinenti yo el Juez agrimensor en virtud del auto que antecede, cite y comparecio en este Juzgado la persona de Don Lucio Gomez y en

ella le notifieque e hice saber el nombramiento de Promotor fiscal de Hacienda publica para la mensura y enterado de todo dijo; lo oye y lo firmo conmigo y los de mi asistencia en la forme ordinaria por derecho doy fe.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO. [RUBRICAS.]

En seguida estando presente la persona de D. Lucio Gomez, Promotor fiscal nombrado le recibi juramento que hizo en toda forma de derecho por Dios Nuestro Senor y una Santa Cruz so cuyo cargo y sus penas ofrecio preceder fiel y legalmente al desempeno de su comision, protestando no defraudar ni consentir lo contrario a los derechos que corresponden a beneficio de Hacienda publica, lo cual ejecutara sin dolo, fraude, polucion ni engano, en fuero del juramento que fecho biene dijo ser mayor de veinte anos, de estado casado de calidad Ciudadano y lo firma por ante mi y los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO.

Yo el nominado alcalde y Juez agrimensor, visto la aceptacion y juramento del nombrado Promotor fiscal de Hacienda Publica, D. Lucio Gomez, dije la deservia y dicierno el tal cargo y para ello interponia e interpongo mi autoridad y judicial decribo y por ella le dava y doy el poder facultad cuanto por derecho se requiera necesario sea mas pueda
y deva valer para que a nombre de Hacienda publica, haga todos
146 los actos agencias y diligencias que aquella por si hacer deva en
la materia y por el presente asi lo decrete, mande y firme en la forma ordinaria doy fe.

MIGUEL TERAN.

De A.:
JULIAN MONTANO.
De A.:

En el mismo dia, mes y ano—

(One stamp and one seal.)

Yo el nominado Alcalde y Juez Agrimensor previa persona liberal del Promotor fiscal nombrado, cite y comparecio ante mi y en este Juzgado las personas nombrados D. Ramon Benites, D. Teodoro Aros y D. Luis Aragon, a quienes de presente les notifique e hice saber el cargo de medidores, valuadores y apuntador de rumbos y cada uno insolidum y de mandomun dijeron; aceptaban y aceptaron el tal encargo y lo firmaron por ante mi el Promotor fiscal y testigos de asistencia con quienes actuo segun derecho doy fe.

MIGUEL TERAN.
LUCIO GOMEZ, *P. F.*
TEODORE AROS.
RAMON BENITEZ.
LUIS DE ARAGON.
JULIAN MONTANO. [RUBRICAS.]

Sucesivamente previa personalidad del Promotor fiscal nombrado y en virtud de la aceptacion hecha por D. Ramon Benitez, D. Teodoro Aros, y D. Luis Aragon en sus personas que doy fe conozco y a cada uno insolidum y demas comun les recibi furamento que hicieron en toda forma de derecho por Dios Nuestro Senor y una Santa Cruz so cuyo cargo y sus penas prometieron proceder fiel y legalmente segun su leal saber y entender en el justifreno del pundo sin que en ello usen de fraude e dolo y en fe de lo cual y observancia del atrivento lo firmaron por ante mi el Promotor fiscal y los de mi asistencia con quienes actuo en la forma ordinaria por derecho doy fe.

MIGUEL TERAN.
LUCIO GOMEZ, *P. F.*
RAMON BENITEZ.
LUIS DE ARAGON.
JULIAN MONTANO. [RUBRICAS.]

Vista la aceptacion y firamento hecha por los Ministros avaluadores y apuntador constante en la presente diligencia, dije; les disernia y dicierno el cargo de peritos medidores, avaluadores y apuntador para lo cual interponia e interpongo mi autoridad y judicial decreto *decreto* dandoles como les doy por el presente todo el poder y facultad necesaria para que reconocidos los terrenos, sus pastos, montes, aguajes y abrevaderos para que segun sus especies calidad y circumstancias los
147 valuen y justiprecien con la legalidad y escupulosidad que requiere la materia. Y por el presente asi lo decrete, mande y firme con los de mi asistencia segun derecho Doy fe.

MIGUEL TERAN.
TEODORO ARos.

De A.: JULIAN MONTANO.

En tres dias del mes de Mayo yo el nominado Alcalde y Juez Agrimensor de estas diligencias dije que en atencion a estar concluidas las diligencias de nombramiento de Ministros necesarios a la faccion mediante a no haber colindantes que citar, fijese cartel publico convocatorio a quienes se creyese tener derecho y por el presente hagase entender que para el dia seis del actual en cuyo tiempo se les vira atendera y guadara la justicia que demaden y les asista y por forma ordinaria doy fe.

MIGUEL TERAN.
JULIAN MONTANO. [RUBRICAS.]

Y continenti se fijo al publico cartel conocatorio que se previene en la diligencia que antecede y para la devida constancia y que obre los efectos que haya lugar en derecho puse esta que rubrique-rubrica. Habiendose citado a Don Manuel Antunes y contestado este con fecha 17 del actual lo que se ve por su oficio que mando se acomule al expediente para que en el obre los efectos que haya lugar en derecho a si mismo esprerese su personalidad para el procedimiento de medidas. Y por el presente asi lo decrete, mande y firme segun derecho doy fe.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO. [RUBRICAS.]

(One stamp and one seal.)

Contestando al oficio de Um de 16 del corriente comparecere personalmente al punto que me cita, sobre las medidas de terrenos que por cuenta de D. Jose de Jesus Perez, se estan ejecutando en el rio de San Pedro; y alli senalare los terrenos que me hayo en disposicion de luego a luego registrar hasta hacer las finales diligencias de composicion con S. M. Y en caso de que dichas medidas comprendan excediendose a los terrenos que senalare y tengo amparados hace el lespacio de dos anos, con mis ganados en tal caso convenga.

Dios guarde a V. M. muchos anos.

Puesto de Terrenate, 17 de Mayo de 1821.

MANUEL ANTUNEZ. [RUBRICA.]

En el campo puesto de San Pedro a los dieziocho dias del corriente mes y ano yo el nominado Alcalde previa personalidad del Promotor fiscal, ministros medidores valuadores y apuntador por ante los de mi asistencia habiendose presentado en persona D. Manuel Antunez y espresado que de la casa de San Pedro no abajo podian proceder a la mensura sin que de alli para dicha ruta le resultase
148 perjucio pues subiendose rio arriba era perjudicado por juzgarse poseido de derechos y comprendidos los terrenos que tiene amparados en los sitios que de dia en dia espera se le adjudiquen lo que espuesto por el referido Antunez, y vido por el apoderado D. Rafael Salas ecepciono este la mora a perjuicio que resultaria a su parte de privarle del veneficio de la agua que produce la cienega que es la madre de estos ejidos; sobre lo cual seria inabil la medida a beneficio de su poderdante; sobre cuyas operaciones lidiaron Antunez y Salas hasta que depues de conciliados en obio de trastornos, gastos y perjuicios que a cualquiera de las partes interesados pudiera resultarles cedieron y convinaron en partir laagua de la cienega mitad por medio para el beneficio de las labores quedando por este mismo hacho obligado a la armonia pues asi se comprometen Antunez por si, y Salas a nombre de su poderante en cuyo testimonio lo sente por diligencia que firmaron conmigo el Promotor fiscal y demas Ministros por ante los de mi asistencia con quienes actuo en la forma ordinaria a falta de Escribano publico y Real que no le hay en los terminos que el derecho prevene que de todo doy fe.

MIGUEL TERAN.
LUCIO GOMEZ.
RAFAEL SALAS.
RAMON BENITEZ.
TEODORE AROS.
JULIAN MONTANO. [RUBRICAS.]

En el mismo dia, mes y ano, estando en el campo y habiendo convinado los interesados previa personalidad del Promotor fiscal y demas Ministros hice poner mohonera esquiena cuadra de donde tomando el rumbo del Surueste al Noroeste se midieron y contaron cincuenta cordeladas que termino la ultima desde la casa rio abajo a las orillas del bado a la caida donde hice poner mohonera cruz y de alli se midieron y contaron cincuenta cordeladas que termino la ultima en el mismo valle a

orillas de una loma a distancia de tres cordeles donde hice poner mohonera esquina y desde ella se midieron y contaron cincuenta cordeles que termino la ultima frente la sierra de Guachuca donde hice poner mohonera cruz en una loma pedregosa, y desde el la se midieron y contaron cincuenta cordeles que

(One stamp and one seal.)

termino el ultimo en una mesa chinosa donde hice poner mohonera esquina y desde alli se midieron y contaron cincuenta cordeles que termino la ultima en la canada de la Bachata donde hice poner mohonera cruz cuadra general concinante y divisoria encerrando este cabeceado y en figura de verdadera cuadra doscientos cordeles que hacen dos y media leguas; y de ahi puesto el abujon y tomando el rumbo del Noroeste al Surueste se midieron y contaron cincuenta cordeles que termino la ultima en medio del valle del rio de San Pedro donde hice poner mohonera esquina y de alli por
dicho rumbo se midieron y contaron cincuenta cordeles que termino
149 el ultimo pasado el rio a la orilla de una loma donde hice poner
mohonera cruz y desde ella se midieron y contaron cincuenta cordeladas que termino la ultima en el arroyo de los Baras donde hice poner mohonera esquina y desde ella se midieron y contaron otras cincuenta cordeladas que termino la ultima en un monte prieto donde hice poner mohonera cruz y de alli se midieron y contaron cincuenta cordeladas que termino la ultima a la descolgada del picacho donde hice poner mohonera esquina cuadra general encerrando esta medida doscientos cincuenta cordeladas que hacen dos y media leguas en su costado con lo que por ser ya tarde se suspendio esta faccion para continuarla el dia siguiente. En cuyo testimonio lo sente por diligencia que firme con el Promotor fiscal, Ministros interesada y los de mi asistencia con quienes actuo en la forma ordinaria.

Doy fe.

MIGUEL TERAN.
LUCIO GOMEZ.
JOSE RAFAEL SALAS.
TEODORO AROS.
RAMON BENITEZ.
JULIAN MONTANO. [RUBRICAS.]

En diezinueve dias del mismo mes y ano previa personalidad del Promotor fiscal y demas. Ministros estando en el campo en la mohonera esquina cuadra general puesto el abujon y tomado el rumbo del noroests al surueste se midieron y contaron cincuenta cordeles que termino el ultimo en un monte espeso donde hice poner mohonera cruz y desda ella se midieron y contaron otras cincuenta cordeladas que termino la ultima en el arroyo del Malpais donde hice poner mohonera esquina y desde ella se midieron y contaron cincuenta cordeles que termino la ultima a la subida de una mesa colorado donde hice poner mohonera cruz y desde ella se midieron y contaron cincuenta cordeles que termino la ultima en la misma mesa donde hice poner mohonera esquina cuadra general confinante y divisoria y desde ella tomando el rumbo del surueste al noroeste se dieron por invivitas y medida doscientas cincuenta cordeladas que componen dos

y media leguas; con cuya operacion quedan uvicados coveceados, medidos y sentrizados cuatro sitios de tierra para ganado mayor sin que resulte perjuicio mediante a la conformidad del cumvecino. Y para que obre los efertos que haya lugar en derecho lo sente por diligencia que firme con el promotor

(One stamp and one seal.)

fiscal, Ministros interesado y los de mi asistencia con quienes actuo en la forma ordinaria por derecho. Doy fe.

MIGUEL TERAN.
LUCIO GOMEZ.
JOSE RAFAEL SALAS.
TEODORO AROS.
RAMON BENITEZ.
JULIAN MONTANO. [RUBRICAS.]

150 SAN PEDRO, *21 de Mayo, 1821.*

Ylallandose concluida esta mensura, dije se preceda al justiprecio y valuo que deben realizan los inspertos valuadores D. Ramon Benitez y D. Teodoro Aros, previa la aceptacion de su encargo y fecho procedase a lo mas en derecho corresponda. Y por el prȝsente asi lo decrete mande y firme en la forma ordinaria?

Doy fe.

MIGUEL TERAN.
JULIAN MONTANO. [RUBRICAS.]

Consecuente y en virtud del auto que antecede, previa personalidad del Promotor fiscal nombrado, siendo presentes los Ministros valuadores D. Ramon Benitez y D. Teodoro Aros, en sus personas les notifique que bajo el cargo que aceptado tienen justiprecia y valuen el fundo que comprende esta mensura de lo que enterados dijeron cada uno insolidum y de comun acuerdo que en atencion a la vista de ojos y reconocimiento de terrenos que al tiempo de sus medidas han especcionado los valuan los tres primeros en sesenta pesos cada uno y el otro restante en diez pesos; que este justiprecio segun su leal suber y entender es el justo y legitimo; tanto por la situacion de sus terrenos cuanto por ser comun entrada y salida de los enemigos barbaros comercio e industria y demas artes liberales e industriales. Que esta es la verdad en fe del juramento que fecho tiene. Dijo ser de estado casado de edad de veintinueve anos, calidad Ciudadano y lo firmo conmigo y los de mi asistencia segun derecho.

Doy fe.

MIGUEL TERAN.
JOSE HOYOS.

A.: RAFAEL YESCAS.
A.: JULIAN MONTANO. [RUBRICAS.]

En seguida city y comparecio a este Juzgada D. Felix Quijada y en su persona que doy fe conozco le recibi peramento que hizo previa personalidad del Promotor fiscal, por Dios Nuestro Senor y una santa cruz so cuyo cargo prometio decir verdad en cuanto supiere y sea preguntado y

siendolo al tenor del antededente interrogatorio, dijo a la primera—Que conoce a D. Jose Jesus Perez y que no le tocan las generales de la ley. A la segundo, que sabe de vidas de que la parte registrante tiene bienes suficientes para poblar y amparar el sitio que se hace mension y responde. A la tercera, que son publicas y motorias y de publica voz y fama y como opinion las ventajas que resultan a la Hacienda publica y toda la nacion, del ampare de los puntos desiertos y despobladas.

Que esta es la verdad en fe del juramento que fecho tiene. Dijo ser de estado soltero de edad de veinticinco anos, de calidad Ciudadano y lo firmo por ante mi y los de mi asistencia segun derecho. Doy fe.

MIGUEL TERAN.
FELIX QUIJADA.

A.: RAFAEL YESCAS.
A.: JULIAN MONTANO. [RUBRICAS.]

151 En el mismo dia, mes y ano, cite y comparecio la persona de D. Francisco Ramirez, a quien previa personalidad del promotor fiscal, le recibi juramento que hizo en toda forma de derecho por Dios Nuestro Senor y una Santa Cruz; so cuyo cargo prometio decir verdad en cuanto supiere y sea preguntado, y

(One stamp and one seal.)

siendolo por el tenor del interrogatorio que antecede, dijo:

A la primera que conoce a D. Jose Jesus Perez y que no le tocan las generales de la ley.

A la segunda que de vidas sabe tener bienes suficientes para el ampare y pueble de esta mercedad.

A la tercera que a toda luz no es desmembrable la ventaja que de su pueble es consiquiente a la hacienda publica y la nacion que esta es la verdad segun su juicio. Dijo ser de estado casado de edad de cuarenta anos de calidad ciudadano y no firmo por no saber hiccelo y con los de mi asistencia con quienes actuo en la forma ordinaria por derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

Ylallandose concluida la informacion que solicita el promotor fiscal dije: vuelcan al poder del nominado promotor para que deduzca lo que estime conveniente. Asi lo decrete y firme segun derecho.

MIGUEL TERAN. [RUBRICA.]

Senor JUEZ AGRIMENSOR:

D. Lucio Gomez, promotor fiscal nombrado en esta agrimensura, dice que visto el estado del expediente y que de el segun su estado supuesto resulta en beneficio de hacienda publica y de toda la nacion el ampare y pueble del sitio de San Pedro; asi es que en obsequio de los derechos de la misma nacion y para que se finque, adjudique y rematen en el mayor y mejor postor, se servira sacar al pregon por el termino de treinta dias consecutivo el avaluo en que se hayan, admitiendo las posturas, pujas y mejoras que resulten y reservandoles su derecho a salvo para el dia de su

fincamiento y remate, que debera ser en la capital de Arizpe en
provicional de real hacienda, precidida por el senor gobernador
dente de la provincia, quien prefijara dia al remate y evaciara
mas que por estilo de la practica universal forence por derecho se re
Es cuanto tiene que espresar el que suscribe sugetando su juicio a
vidad del sabio gobierno y liberatud del teniente letrado de provi
Fronteras, 26 de Mayo de 1821.

LUCIO GOMEZ. [RUBRI

FRONTERAS, *27 de* 1

Vista la solucion del promotor fiscal nombrado, dije se
152 al pregon el sitio de San Pedro y su valuo admitiendose l
turas, puja y mejoras que se hagan, y por el presente asi lo
mande y firme segun derecho doy fe.

MIGUEL TEI

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En el mismo dia, mes y ano, yo, el juez agrimensor, hice que a
caja y en altas, claras y legibles voces dijera Lazaro Quijada; s
publico y notorio como D. Jose Jesus Perez ha registrado el par
San Pedro y admitida su solicitud se midieron u uvicaron y mere
cuatro sitios de tierra para ganado mayor los que se justipreciaron
lloraron en cantidad de ciento y noventa pesos; en cuya virtud tod
que se creyese con derecho fundo o quiera hacer postura al terre
se domina, occura que se le admitira la postura y guardaran sus a
hasta el dia del fincamiento de remate que sera en Arizpe el dia
signe el senor gobernador yntendente de la provincia para cuyo
le son recabados sus acciones y derechos y no habiendo resultado
alguno lo sente por diligencia que firme con los de mi asistencia
derecho doy fe, y en este papel in perjuicio del real haber.

MIGUEL TEI

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 28 dias del mismo mes y ano, yo, el nominado alcalde, hic
son de caja y por voz de pregonero, se sacara al publico la merced y
del parage de San Pedro, y no habiendo resultado postor, lo se
diligencia que firme segun derecho doy fe.

MIGUEL TEI

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 29 dias del referido mes, yo, el expresado alcalde, hice qu
de caja y por voz de pregonero, se sacasa al publico la merced y
del parage de San Pedro, y no habiendo resultado postor, lo se
diligencia que firme segun derecho doy fe.

MIGUEL TEI

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 30 del corriente mes, yo, el referido alcalde, hice que a son de caja y por voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

153 En 31 dias de dicho mes y año, yo, el mismo alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage San Pedro, y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En el mes de junio 1 del año de 1821, yo, el Alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En dos dias del mismo mes, yo, el nominado alcalde, hice que a son de caja y por voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo puse por diligencia que firme con los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 3 dias del referido mes, yo, el referido alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 4 dias del mismo mes, yo, el referido alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 5 del expresado mes, yo, dicho alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En seis dias del expresado mes, yo, el nominado alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la merced
154 y valuo del parage de San Pedro, y no habiendo resultado postor, lo puse por diligencia.

(One stamp and one seal.)

que firme con los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 7 dias del mismo mes, yo, el referido alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la mereed y valuo del parage de san Pedro, y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En ocho del expresado mes, yo, el mismo alcalde, hice que a son de caja y por voz de pregonero se sacose al publico la mereed y valuo del parage de San Pedro, y no habiendo resultado postor, lo puse por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En nueve dias de dicho mes, yo, el mismo alcalde, hice que a son de caja y por voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro, y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En diez dias del mismo mes, yo, el referido alcalde, hice que a son de caja y por voz de pregonero se sacase al publico lo mereed y valuo de parage de San Pedro, y no habiendo resultado postor, lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En once dias del expresado mes y año, yo, el juez agrimensor, hice que a son de caja y en altas, claras y legibles voces dijera Lazaro Quijada; se hace publico y notorio como D. Jose Jesus Perez ha registrado el parage de San Pedro y admitida su solicitud, se midieron u uvicaron y mercenaron cuatro sitios de tierra para ganado mayor, los que se justipreciaron y valoraron en cantidad de ciento y noventa pesos; en cuya virtud todo aquel que se creyere con derecho fundo, o quisiese hacer postura al terreno que se domina ocurra que se le admitira la postura y

guardaran sus acciones hasta el dia del fincamiento de remate que
155 sera en Arizpe el dia que designe el senor gobernador yntendente de la provincia, para cuyo fecho le son reservadas sus acciones y derechos, y no habiendo resultado postor alguno, lo sente por diligencia que firme con los de mi asistencia segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 12 dias del mismo mes en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme en toda forma de derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 13 dias del expresado mes yo el mismo Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo puse por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 14 del referido mes yo el Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo

(One stamp and one seal.)

resultado postor, lo puse por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 15 dias del expresado mes yo el mismo Alcalde hice que a son de caja y en voz de pregonero, se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo puse por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 16 dias del mismo mes yo el referido Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage se San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

156 En 17 dias del propio mes ano yo dicho se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 18 dias de dicho mes yo el mencionado Alcalde hice que en son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 19 dias corriente mes yo el nominado Alcalde hice que en son de caja y en voz de pregonero se sacase al publico merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 20 dias de dicho mes yo el referido Alcalde hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 21 dias de este mes yo el expresado Alcalde, hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no haniendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 22 dias del mismo mes yo el referido Alcalde hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 23 dias del nominado mes yo el propio Alcalde hice que a son de caja y voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor, lo sente por diligencia que firme segun derecho. Doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 24 dias de dicho mes Yo el mismo Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la mensura y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.

(One stamp and one seal.)

A.: JULIAN MONTANO. [RUBRICAS.]

En 25 dias del mismo mes Yo el nominado Alcalde hice que a son de caja y en voz de pregonero se sacase al publico la merced y valuo del parage de San Pedro y no habiendo resultado postor lo sente por diligencia que firme segun derecho doy fe.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [RUBRICAS.]

En 26 dias del corriente mes y ano Yo el Alcalde Constitucional y Juez agrimensor de esta merced, dije; que hallandose evacuadas las diligencias correspondientes a la agrimensura, se remitan a la Superiondad del Sor Gobernador Yntendente, para que su Senora disponga lo que sea de superior agrado Y por el presente asi lo decrete mande y firme por ante los de mi asistencia y en este papel sin perjuicio de haber publico Doy fe.

MIGUEL TERAN.

A.: JOSE HOYOS.
A.: FELIX QUIJADA. [RUBRICAS.]

Senor GOBERNADOR YNTENDENTE:

Paso a manos de U. S. las diligencias de medidas, vista de ojos, valuo y pregones practicados en el despoblado sitio de San Pedro a favor de D. Jose Jesus Perez para que U. S. disponga lo que sea de justicia—Dios guarde a V. S. muchos anos.

Fronteras 26 de Junio de 1821.

MIGUEL TERAN.

Sor Gobernador Yntendente D. Antonio Cordero, Arizpe, 9 de Julio de 1821, Al Promotor fiscal, Cordero. Rubrica.

Senor YNTENDENTE:

El Promotor fiscal de esta Yntendencia dice; que estas diligencia de mensura, avaluo, informacion de idoneidad y pregones de cuatro sitios de tierra realenga para oria de ganado mayor comprendidos en el parage nombrado San Pedro sito en jurisdiccion del Presidio
158 de Fronteras, justipreciados en cantidad de ciento noventa pesos, a razon de sesenta cada uno de los tres primeros, y de diez pesos el restante; y medidos a favor de su denunciante Don Jose Jesus Perez, vecino de esta Ciudad; estan practicadas conforme en todo a las reales y superiores disposiciones que hacen regla en la materia Esto supuesto, y atendiendo el

merito que de suyo encierra la evacuada solicitud del citado interesado, por ser aquel realengo tanto mas riesgoso del enemigo Apache que hostiliza esta Fronteras, cuanto es muy conveniento y ventajoso el pueblo del mismo pide el defensor fiscal de la Hacienda publica, se sirva Ud si lo tuviese a bien, mandar que con citacion de partes se proceda en esta Capital a la celebracion de las respectivas tres almonedas de estio en solicitud de postores para el remate del expresado terreno mensurado que debera fincar en la ultima de ellas a favor del mayor y mejor que resulte; hariendose entender a este proceda a enterar en Tesoreria el valor principal en que se le rematen dichos cuatro sitios, su media Annata y 18 per cent. de conecuccion; el 2 per cent. mandado exigir; por punto general, y tres pesos para los oficiales agregado a la Contaduria general de Ejercito, y que visto y aprobado que sea en junta Provincial este expediente, agregandosele la correspondiente certificacion que acredite el citado entero se de cuenta con el mismo a la Superior Hacienda para la resolucion que convenga Este es mi parecer, el cual no se ha despachado hasta hoy del oficio fiscal, por la involuntaria traspapelada que el expedient a ha sufrida en el; mas V sin embargo, resolvera lo que fuere de su mayor ggrado.

Arizpe 25 de Junio de 1822.

FRANCISCO PEREZ. [RUBRICA.]

ARIZPE, *Julio 3 de 1822.*

Como parece al promotor fiscal de esta Yntendencia en su antecedente respuesta; procedase a la celebracion de las tres publicas almonedas y remate de las tierras nombradas San Pedro de que tratan estas diligencias con previa citacion del apoderado del interesado Don Jose Ma. Serrano El Senor Yntendente de esta Provincia asi lo decreto, mando y firmo con testigos de asistencia a falta de todo Escribano.

BUSTAMANTE. [RUBRICA.]

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [RUBRICAS.]

Yncontinenti siendo presente D. Jose Ma. Serrano se le notificaron el parecer fiscal y auto de conformidad que antecede de que quedo inteligenciado y lo firmo con el Senor Yntendente y testigos de su asistencia.

BUSTAMENTE.

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [RUBRICAS.]

159 *1st almoneda.*

En la Ciudad de Arizpe a los tres dias del mes de Julio de mil cohocientos veintidos; convocados en junta de Almonedas de esta propia Capital el Sor Yntendente, como Presidente y los vocales que la componen a efecto de celebrar la primera de las tieras a que se contra este expediente, hicieron que a son de caja se reuniesen muchos individuos en el oficio de esta Yntendencia y que en su presencia procediese el pregonero Loreto Salcido a dar un pregon como efectivamente lo dio en altas y claras coces diciendo; van a rematarse en esta junta de almonedas cuatro sitios de tierra realenga para cria de ganado comprendidas en el parage nombrado San Pedro sitos en el particular territorio del presidio de Fronteras mensurados a favor de Don Jose Jesus Perez de esta

Ciudad y valuade en la cantidad de ciento noventa pesos a razon de sesenta cada uno de los tres primeros y de diaz pesos el restante; quien quisiera hacer postura al insiduado realengo ocurra a formalizarla ante esta junta donde se le admitira la que con regularidad hiciera; en la inteligencia de que en la tercera y ultima almoneda que ha de practicarse el dia de pasado manana quedara celebrado el remate en el mayor y mejor postor. Y no habiendo ocurrido ninguno se instruyo por diligencia que firmaron los Sres. Presidente y vocales de esta junta de almonedas.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ. [RUBRICAS.]

2d almoneda.

En la misma Ciudad a los cuatro dias del mes y ano expresados; se procedio a la celebracion de la segunda almoneda de este expediente, practicandose en los propios terminos que la primera antecedente con solo la diferencia de decir al publico que manana quedara celebrado el remate. Mas no habiendo resultado ningun postor se puso esta diligencia que firmaron los Senores presidente y vocales de esta Junta de Almonedas.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ. [RUBRICAS.]

3d almoneda.

En la Ciudad de Arizpe a los cinco dias del mes de Julio de mil ochocientos veintidos convocados en junta de Almonedas de esta propia capital el Senor Yntendente como presidente y los cocales que la componen con objecto de celebrar la tercera y ultime para el remate de las tierras a que se contraen estas diligencias hicieron que a son de caja y voz de pregonerose reuniesen muchos individuos en el oficio de esta Yntendencia y que en su presencia procediese Loreto Salcido a dar um pregon como efectivamente lo dio igual en todo al que consta de la presedente almoneda, con solo la diferencia de anunciar al publico que ahora mismo a de quedar celebrado el remate en el mayor mejor postor. En cuyo acto comparecio D. Jose Ma Serrano como apoderado de D. Jose Jesus Perez ofreciendo de nuevo el valordel terreno; y siendo ya dada la plegaria de las doce de este dia dijo por ultimo el pregonero, a la una, a las dos, a las tres, que se remata, que se remata, que se remata, que buena, que buena, que buena pro le haga a Dn Jose Jesus Perez. En tales terminos se concluyo este acto quedando solemnemente rematados a favor de este interesado los cuatro sitios de tierra realenga de que trata este expediente por la cantidad de ciento noventa pesos y para la debida constancia se sento esta diligencia que con el apoderado Don Jose Ma Serrano firmaron los Senores presidente y vocales de esta junta de Almonedas.

BUSTAMANTE.
FUENTE.
ELIAS GONZALES.
PEREZ.

ARIZPE, *6 de Julio de 1822.*

Pase este expediente en traslado con el testimonio autorizado y comprensivo de las superiores determinaciones que rigen en la materia al apoderado Don Jose Ma Serrano para que dentro de tercero dia proceda a exponer en favor de su partie lo que le ocurra en el presente negocio; notificandosele nombre en Mexico un sugeto abonado que la agite en aquella corte.

El Sr. Yntendente interino de esta Provincia, asi lo decreto y firmo con testigos de su asistencia.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [RUBRICAS.]

RAZON.—En el mismo dia mes y ano se entrego en fojas utiles este expediente y el citado testimonio al expresado apoderado. Rubrica.

SENOR YNTENDENTE:

Don Jose Ma Serrano como apoderado de D. Jesus Perez de esta vecindad, ante Ud parezco y digo; que hago pronta devolucion de este expediente de las tierras nombradas San Pedro y del testimonio con que se me ha corrido en traslado manifestando hallarme conforme con lo actuado hasta su actual estado de remate por estar arregla do en todo a las Superiores disposiciones que gobiernan en la materia y comprende el citado testimonio y solo me resta suplicar a Ud se sirva providenciar la pronta conclusion y curso de este expediente para que obtenida que sea la aprobacion de la Junta Superior de Hacienda se libre a favor de mi parte el correspondiente titulo de merced y confirmacion de los cuatro sitios que contiene el expresado terreno estando pronto a nombrar en Mexico un sugeto abonado y expensado que se encargue de agitar en aquella
161 corte el presente negocio. Por tanto—A Ud pido y suplico se merced mi parte en cuya anima juro no ser de malicia, &c.

JOSE MA. SERRANO. [RUBRICA.]

Auto en vista—En la Ciudad de Arizpe a los seis dias del mes de Julio de mil ochocientos veintidos.

El Senor Yntendente interina de estas Provincias de Sonora y Sinaloa, Ministro Tesorero propietario D. Ygnacio de Bustamante y Velasco, habiendo visto estas diligencias de medidas, avaluo, pregones, almonedas y remate de las tierras nombrados San Pedro mensuradas para cria de ganado mayor y caballada a favor de Don Jose Jesus

(One stamp and one seal.)

Perez vecino de esta Ciudad y citas en el particular territorio de Fronteras, la respuesta dada por su apoderado Don Jose Maria Serrano en el antecedente escrito, con todo lo demas que conste y ver convino, dijo; que declarando como declara por bastantes conformes y arregladas las expresadas diligencias a las superiores disposiciones que rigen en la materia y admitiendo como desde luego admite a composicion con la Hacienda Ymperial al nominado Don Jose Jesus Perez, por el referido realenga, debia mandar y mando se notifique y hagar saber a su apoderado proceda a enterar en esta Tesoreria la cantidad de doscientos ocho pesos un grano en este forma; ciento noventa pesos por el valor principal en que se le

remata ron al dicho interesado cuatro sitios que comprende el relacionade terreno once pesos un real ocho granos por el derecho de media annata y su 18 per cent de conduccion; tres pesos seis reales conci granos respectivos al 2 per cent mandado exigir por punto general, y los tres pesos restantes por derechos de la contadura extinguida del mismo ramo, y verificado que sea este entero ponien dose de el la correspondiente certificacion que loacredite en este expediente se dara cuenta con el mismo o la junta Superior de Hacienda para su aprobacion a la resolucion que convenga. El Senor Yntendente por este auto en vista asi lo proveyo mando y firmo con testigos de asistencia a falta de Escribano.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [RUBRICAS.]

Yncontinenti siendo presente el apoderado D. Jose Ma Serrano se le notifico el auto que antecede de que quedo inteligenciado y lo firmo con el Senor Yntendente y testigos de asistencia.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [RUBRICAS.]

162 JUNTA PROVINCIAL DE LA HACIENDA YMPERIAL Y ARIZPE,
7 de Julio de 1822.

Vistos.

Declarase desde luego por legal publica y solemnemente rematados en junta de Almonedas de esta Capital del dia 5 del corriente a favor de D. Jose Jesus Perez de esta vecindad, los cuatro sitios de tierra realenga para cria de ganado mayor que comprende el parage nombrado San Pedro, cito en el particular territorio del presidio de Fronteras por la cantidad de ciento noventa pesos de su justiprecio y en su consecuencia dese cuenta con este expediente a la Junta Superior de Hacienda para su aprobacion, o la resolucion que convenga, conforme tiene providenciado esta Yntendencia en su antecedente anto.

Asi lo acordaron y firmaron los Senores presidente vocales de esta junta provisional.

BUSTAMANTE.
FUENTE.
ELIAS GONZALES.
PEREZ. [RUBRICAS.]

ARIZPE,
7 de Julio de 1822.

Cumplase lo resuelto por la Junta Provincial de Esta Yntendencia en su antecedente acuerdo de hoy.

BUSTAMANTE. [RUBRICA.]

Antonio Carrillo, comisario de la seccion de hacienda de Arizpe en el Estado interno de Sonora—Certifica: Que al folio 55 del libro manual de cargo y data del ano de 1822 se halla sentada la partida siguiente.

Julio 8.—Son cargo doscientos ocho pesos un grano que entero en este Tesoreria, a nombre y como apoderado de D. Jose Jesus Perez vecino de esta Ciudad en esta forma; 190 pesos por el valor principal en que se le remataron por esta Yntendencia cuatro sitios de tierra rralengas para cria de ganado mayor comprendidos en el parage nombrado San Pedro, sito en el particular territorio del partido de Fronteras; 11 pesos 1 rs. 8 gs. por el derecho de media annata y su 18 per cent: 3 pesos 6 rs. 5 gs. por el dos por ciento mandado exigir por punto general; y los 3 pesos restantes por derechos de la centaduria extinguida del proprio ramo, segun explica el oficio de la misma Yntendencia que distingue el numero 30. . 8208 0 1

FUENTE.
GONZALES.
JOSE MA. SERRANO.

Y para que conste donde convenga doy la presente por duplicado a pedimento del Sor Tesorero General del Estado D. Jose Maria Mendoza, en este papel comun por falta del de oficio en Arizpe a veinticinco de Octubre de mil ochocientos treinta y dos.

ANTONIO CARRILLO. [RUBRICAS.]

163 Senor TESORERO GENERAL:

Ygnacio Perez a nombre de su hermano Jose de Jesus ante V. S. en la mas bastante forma parezco y digo; que por al expediente original que pongo en manos de V. S. tendra la bondad de imponerse que en 5 de Julio de 1822 que rematado a favor de mi citado hermano el terreno nombrado San Pedro, sito en la jurisdiccion de Fronteras, comprensivo de cuatrositios de tierra; y habiendo permitado por via legal el derecho que a ellos tenia con el Ciudadano Rafael Elias, y mediante a que aun no se ha expedido el titulo de merced respectivo—A V. S. pido y suplico mandar expedir el correspondiente a favor del expresado Ciudadano Rafael Elias, como actual dueno y propietario del terreno de San Pedro Es gracia que impetro de V. S. jurando no ser de malicia.

Arizpe, 25 de Octubre de 1832.

YGNACIO PEREZ. [RUBRICA.]

ARIZPE, *25 de Octubre de 1832.*

Por presentado con el expediente que a compana; dese cuenta con el informe conveniente al Supremo Gobierno del Estado, en cumplimienta de lo prevando en el articulo 28 de la ley no 30 de 20 de Mayo de 1825 para las providencias que correspondan. El teserero general del estado de Sonora, asi lo proveyo, mando y firmo con testigos de asistencia segun derecho.

MENDOZA.

A.: MARIANO ROMO.
A.: JOSE MA. PEREZ. [RUBRICA.]

ARIZPE, *31 de Octubre de 1832.*

Agreguese a este expediente copia de la consulta hecha al supremo gobierno y la resolucion original de la misma superioridad y expidase en su virtud el correspondiente titulo de merced a favor del Ciudadano

Rafael Elias de cuatro sitios de tierra del pursto de San Pedro. El tesorero general del estado asi lo provengo y firmo con testigos de asistencia segun derecho.

MENDOZA.

A.: LUIS CARRANCO.
A.: BARTOLO MIRANDA. [RUBRICAS.]

TESORERIA GENERAL DEL ESTADO DE SONORA.

ECMO SENOR: El Ciudadano Ygnacio Perez de esta vecindad, ha puesto en mis manos con el escrito respectivo, el expediente que tengo el honor de poner en las de V E., comprensivo de registro, medidas, avaluo, pregones y remate de cuatro sitios de tierra, en el questo nombrado rio abajo de San Pedro a favor del Ciudadano Jose de Jesus Perez. Justifica por la certificacion que tambien esta agregada al expediente, que pago en la Tesoreria nacional de esta Capital la cantidad de doscientos ocho pesos un grano, por valor principal del terreno y sus respectivos derechos; y pide por ultimo que mediante a haber permutado con el Ciudadano Rafael Elias, se le expido este, el titulo de merced respectivo, compliando a la vez con el arto. 27 de la ley no. 30 de 20 de Mayo de 1825,
164 y esta Tesoreria al dar cuenta a V. E. en observancia del 28 de la misma ley, tiene el honor de manifestarte, que estima por bastante, legal y concluido con las formalidades establecidas por las leyes, el expediente citado y por consecuencia expedito para extenderse el titulo que solicita sin embargo V. E.

(One stamp and one seal.)

tendra la dignacion de resolver lo que fuere de su superior agrado.
Dios y Libertad.
Arizpe, 25 de Octubre de 1832.

JOSE MA. MENDOZA.

Ecmo Senor Gobernador de este Estado.
Es copia.
Arizpe, 25 de Octubre de 1832.

MENDOZA. [RUBRICA.]

Un sello que dice—Gobierno del Estado libre de Sonora.

Reconocido el expediente de tierras que V. S. acompana a su nota de 25 del que fina, comprensivo de cuatro sitios mensurados en el puesto nombrado rio abajo de San Pedro, a favor de Don Jose Jesus Perez, lo devuelvo a V. S. a fin de que expida a Don Rafael Elias el titulo de merced que le corresponde, por permuta que le hizo Don Ygnacio Perez de esta vecindad.
Dios y Libertad.
Arizpe, Octubre 31 de 1832.

YGNO. DE BUSTAMANTE. [RUBRICA.]
LUCAS RODRIGUEZ, *Offl. 1st.* [RUBRICA.]

Senor Tesorero general del Estado.

Agregados el expediente original los preincertos documentos se concluyo este con todos los requisitos y formalidades establecidas por las leyes, quedando custodiado en el archivo de esta Tesoreria general para perpetua

constancia—Por tanto; usando de las facultades que me concedin las leyes, por el presente y a nombre del Estado Soberano de Sonora, confiero merced en forma de cuatro sitios de tierra para cria de ganado mayor y caballada que comprende el puesto nombrado de San Pedro, sito en jurisdiccion del presidio de Santa Cruz a favor del Ciudadano Rafael Elias, a quien concedo doy y ajudico dichas tierras por via de venta, y con las calidades, firmeza y subsistencia que establecen las leyes, para si, sus hijos, herederos y sucesores, con todas sus entrados, salidas, usos, costumbres, maderas, montes, pastos, aguas, aguajes, abrevaderos y demas que le correspondan con la precisa calidad y terminante condicion que han de montener poblados y ampara dos dichos terrenos, sin que esten desamparados, desiertos ni despoblados por tiempo alguno, bajo el apercibimiento de que si se verificase su total abandono por espacio de tres anos consecutivos y hubiese alguna persona que los denunciase, en tal evento, con previa califacacion del hecho, se declararan por baldios, y se adjudicaran de neevo a favor del mejor
165 poster, eceptuandose como es justo aquellos casos en que el desemparo sea por causa de notorias invacio nes de enemigos, por solo el periodo de semejantes acontecimientos. Previniendose como estrechamente se previene al Ciudadano Rafael Elias, asi como a sus sucesores que habian de sugetarse y limitar se al terreno, pertenencias, termino y linderos senalados individualmente en las preincertas diligencias de medidas; observando y dando su exacto cumplimiento al arto. 30 de la ley no. 30 de 20 de Mayo de 1825, que les impone la obligacion de mantener en sus terminos linderos mohoneras de cal y canto, bajo lo multa de veinticinco pesos, que se les exigiran si contravienesen para los pondos del comun, construyendose en este caso por el respectivo Juez las expresadas mohoneras de cuenta de los interesados. Y ordeno y mando a los Jueces, Justicias y autoridades locales que al presente son y en adelante fueron del partido de esta Capital, que en obsequio de la buena y pronta administracion de justificia, y en cumplimiento de las leyes de la materia, no permitan que el referido interezado ni sus sucesores sean de ninguna manera perturbados, in quietadoes ni molestados en el libre uso ejercicio, propiedad, dominio y posecion de los mencionados cuatro sitios de tierra, que comprende el puesto nombrado San Pedro; antes si celaran y cuidaran constantemente con la mayor vigilancia y actividad, que sean amparados y mantenidos siempre en la quieta y pacifica posesion que les corresponde con legitimo derecho para que de este modo puedan libremente vender, cambiar permutar, donar, traspasar, ceder y enagenar dichas tierras a su arbitrio y libre eleccion como duenos propietarios absolutos. En cuyos terminos expedi el presente titulo de merced en forma a favor del Ciudadano Rafael Elias y a sus hijos, herederos y sucesores entregandoseles para su resguardo con previa toma de razon en el correspondiente libro. Dado en la capital de Arizpe a los ochodias del mes de Mayo de mil ochocientos treinta y tres, autorizado y firmado por mi sellado con el sello de esta Tesoreria general por ante los infrascritos testigos de mi asistencia a falta de Escribano que no lo hay segun derecho.

JOSE MARIA MENDOZA.

A.: MARIANO ROMO.
A.: LUIS CARRANCO. [RUBRICAS.]

Un sello—Tesoreria general del Estado libre de Sonora.

Queda tomada razon de este titulo en el correspondiente libro que existe en esta Tesoreria general al folio 12—una rubrica.

JOSE MARIA MENDOZA,
Tesoreria General del Estado de Sonora.

Certifico; que al folio 34 del libro manual del corriente ano, se halla sentada la partida siguiente.

Mayo 8, cargo en titulos de merced de terrenos treinta pesos enterados por el Ciudadano Rafael Zubia a nombre del Ciudadano Rafael Elias vecino de esta Capital por el valor del titulo de merced en forma
166 expedido por esta Tesoreria general el dia hoy a favor del expresado Elias de cuatro sitios de tierra para cria de ganado mayor y caballada que comprende el puesto nombrado San Pedro en jurisdiccion del presidio de Santa Cruz; y de este entero se expedio la conveniente certificacion $30.00.

MENDOZA.
MILLA.
RAFAEL ZUBIA.

Y para que conste donde convenga doy lay presente en Arizpe a ocho de Mayo de mil ochocientos treinta y tres.

JOSE MARIA MENDOZA.

Es copia.

URES, *de 1855.*

Concuerda con su original del que esta fielmente sacada corregido y concertado en elsello que corresponde, en ocho fojas utiles, hoy nueve de Julio de mil ochocientos cincuenta y cinco. Lo que para constancia autorizo y firmo con los de mi asistencia.

JOSE BUSTAMANTE.

A.: J. ESTRELLA CORDOVA.
A.: J. RAMON ROMO. [RUBRICAS.]

Derecho por pagar—Por tres y medio pliegos escritos a 6 rs. . . . 82.5.—Por la concordata—6—Suma 88.3.

Ures Julio 10 de 1855.

BUSTAMANTE. [RUBRICA.]

Derechos al tazador—cuatro reales.
Vo. Bo.

PEDRO FERNANDO SALDAMADO. [RUBRICA.]

Ygnacio Pesquiera, commandante de Batallon de Urvanos, Prefecto y Comandate Militar del Distrito de Ures, Capital del Departamento de Sonora.

Certifico; que la finna que aparece de los antos anteriores del Sor Juez de 1st. Ynstancia de lo civil Don Jose Bustamante es la misma que acostumbra poner en todos los documentos que ha firmado y autorizado como tal funcionario Y para su validacion

(One stamp and one seal.)

le autorizo en la misma fecha a pedimento del interesado.

Y. PESQUIERA. [RUBRICA.]

Es testimonio fiel y legalmente sacado del titulo original que existe en el archivo de esta Tesoreria general, esta corregido y cotejado en estas veinte fojas de papel cubiertas con las estampillas correspondientes; el que autorizo y firmo en Hermosillo a los veintisiete dias del mes de Julio de mil ochocientos noventa y un anos.

V. AGUILAR.

167 Ramon Corral, Vice-Gobernador constitucional del Estado de Sonora, en ejercicio del Poder Ejecutivo.

Certifico; que el Co. Victor Aguilar, es Tesorero General del Estado y suya la firma que antecede.

Hermosillo, Julio veintiocho de mil ochocientos noventa y unos.

(Hermo., Julio 28 de 1891.)

(One stamp and one seal.)

RAMON CORRAL.

[SEAL.] ENRIQUE MONTEVERDE, O. M.

Certifico; que el Sr. Bme. Rochin entero en esta oficina incluso el 25 per cent federal, cinco pesos por los derechos que causo la lagelizacion de firma que hace el Gobernador del Estado, de la del Tesorero General del mismo.

Hermosillo, Julio 27 de 1891.

MANL. MUNOZ.

(Stamp and seal.)

Dros del Estado	$4.00
25 per cent Federal	1.00
Suma	$5.00

Filed in the office of the clerk Court of Private Land Claims Dec. 3, 1891. Jas. H. Reeder, clerk, by Irenio L. Chaves, deputy.

PLAINTIFF'S EXHIBIT 8 A.

(Seal treasury-general of the State of Sonora.)

The year 1891.

Title papers of the ranch of San Pedro, situate in Fronteras, district of Arispe.

A stamp of fifty cents, duly cancelled.

HERMOSILLO, *July 23d of 1891.*

Mr. BME. ROCHIN, *present.*

DEAR SIR: By the present I give and confer on you special power, full, complete, and sufficient, as far as in law is required, with the greatest force and efficacy, so that as the representative of Messrs. Manuel and Jose Ma. Elias, as common owners of the ranch of San Pedro and by whom I am authorized, as may be seen by the letters joined herewith, you may present yourself before whom it may be proper and obtain the

copy of the (title papers) of said ranch of "San Pedro," situate in Fronteras, district of Arispe. I trust you will accept my power, with all the necessary faculties, I standing by and confirming whatever you may do in this respect. Without anything further, I am, respectfully, &c.,

J. P. M. CAMOU. [SCRAWL.]

168 TOMBSTONE, *June 18th, 1891.*

Mr. VICTOR AGUILAR, *Hermosillo.*

MY DEAR SIR: Mr. Antonio Camou has requested of me, as coowner of the ranch of "San Pedro," permission to get a certified copy of said ranch and of the first survey of it, in order to ascertain in the United States the northern monument of the said ranch, because the southern boundary, situated within the United States, of the ranch of "San Rafael del Valle," his property, joins the aforesaid monument of the San Pedro. In consequence I grant the said permit. Mr. Camou will pay the necessary costs. Without further, I remain, yours, &c.,

MANUEL ELIAS. [SCRAWL.]

Jose Maria Elias.

SAN PEDRO, *Julio 19th, 1891.*

Mr. VICTOR AGUILAR, *Hermosillo.*

DEAR FRIEND: Mr. Juan P. Camou, our friend, desires to have copy of the old title of this ranch in order to ascertain the exact point where our old titles fixed its boundaries towards the north, from which began the boundaries of the surveys of the ranch of San Rafael del Valle, which formerly belonged to us and to-day to Mr. Camou.

As far as I am concerned I do not think it detrimental to have the investigation desired by Mr. Camou made. Without further, I remain, your friend, &c.,

JOSE MA. ELIAS. [SCRAWL.]

A stamp of fifty cents, duly cancelled.

Mr. TREASURER GENERAL:

Bme. Rochin, an employé of this department, before you respectfully represent that I am specially empowered by Messrs. Manuel and Jose Ma. Elias to ask for a copy of the title of the ranch of "San Pedro," situate in Fronteras, district of Arispe, and inasmuch as the original title exists in the archives of the treasury, which is under your charge, I ask and beg of you to order a certified copy of it to be delivered to me, I paying all the costs that may be imposed. I make the necessary protest, &c.

Hermosillo, July 23d, 1891.

BME. ROCHIN. [SCRAWL.]

A seal that says: Treasury general of the State of Sonora, July 23d, 1891.

HERMOSILLO, *July the twenty-third of One thousand eight hundred and ninety-one.*

As it is asked, let the title referred to be hunted up and a certified copy of it be delivered as requested. The treasurer-general so ordered and signed it.

V. AGUILAR. [SCRAWL.]

169 Good for the biannual of 1820 and 1821. Scrawl, third seal, two reals, years one thousand eight hundred and fourteen and fifteen. A seal that says: Fernando VIII, D. G. M., years 1816 and 1817. Another seal that says: Fernando VII, D. G. M., years 1818 and 1819, two reals, gobernor intendente, Don Jose de Jesus Perez, resident of this capital.

Before your lordship, according to law and the royal ordinances concerning lands, laws, approbations, and instructions in relation to the royal lands and their disposition, with which H. M. (D. G. M.) favors his subjects, I appear and say—

That in order to take care of some live stock, not having as my own property any lands where to locate and raise them, I apply to your highness (with the prior consent of my father), so that in conformity with what is provided by the laws of the nation and what is provided by the royal cedula of 14th of February of 1805 to register the deserted place on the River San Pedro, situated in this province towards the northern frontier of the enemy, near the abandoned place called Nutrias, in view of which I offer to satisfy your majesty (D. S. G.) with the usual fees for settlement—the half per cent dues and the other necessary fees; for so it is in exact justice what I represent.

Wherefore I pray your majesty to order a commission to carry out the proceedings of viewing and reconnoitering the lands, survey, appraisement, publication, possession, and sale of the four sitios, to be surveyed to me in the figure of a square or quadrilatera', according to the conditions of the land. In such terms I request of your highness to grant my solicitude, in which I will receive favor. I make the necessary protests.

JOSE DE JESUS PEREZ. [A SCRAWL.]

ALAMOS, *March 12th, 1821.*

Presented and accepted without prejudice to third parties.

Don Nazario Gomez shall proceed to survey, appraise, and perform the other acts in the usual form, summoning neighboring owners, and after finishing them let him report to me, so as to give effect to the other acts necessary.

CORDERO. [A SCRAWL.]

FRONTERAS, *28th of April, 1821.*

Received from the agent, Don Rafael Salas, the foregoing superior decree of commission, in virtue of which I make the necessary notification and ask for the help to be provided by the constitutional alcalde of this precinct, so as to proceed with the survey.

I, Don Nazario Gomez, judge commissioner, so decreed, ordered, and signed before those of my assistance according to law.

I certify.

NAZARIO GOMEZ.

Ass.: LUCIO GOMEZ.
Ass.: FULGENCIO TELLES. [A SCRAWL.]

170 On the 29th of the present month the notification provided for in the foregoing was issued. In witness whereof I make this with my scrawl. A scrawl.

On the 30th of the present month and year the constitutional alcalde, Don Miguel Teran, answered my request in the negative for the help asked of this court, in which he demanded the delivery of the expediente into his possession in the following terms, saying (among other things), I hope you will forward them to me, so as to give due course to the superior decrees, for I can not give the permit for the survey if the same is not done by myself, being subject to make explanations to the higher powers whenever these may demand them, which I reserve for that occasion, which is my answer to your communication.

In virtue of which, and allowing it to rest upon his responsibility, I transferred the present expediente to him, requiring a receipt for the protection of this court, and by the present I so decreed and signed it according to law.

I attest.

NAZARIO GOMEZ.

Ass.: LUCIO GOMEZ.
Ass.: FULGENCIO TELLES. [SCRAWLS.]

FRONTERAS, *May 3d, 1821.*

Act of obedience.

The foregoing superior decree received—delivered to this court by Don Nazario Gomez, in virtue whereof, and Don Rafael Salas having presented himself as the representative of Don Jose Jesus Perez, the interested party, whose power of attorney I certify as having seen, I ordered the survey; to which end I ordered to be appointed an agent for the treasury, surveyors, appraisers, and compass man, and, as in the persons of Don Lucio Gomez, Don Ramon Benites, Don Teodoro Aros, and Don Luis Aragon reside the qualities of aptness, well known practical skill, and knowledge, I have appointed, as I do appoint, the first as agent of the treasury, to reconnoite the country, looking over and to guard the interest of the public treasury; the second and third—that is, Benites and Aros—as appraisers, and the fourth, Don Luis Aragon, as compass man; therefore, let them be notified of their appointments, so that, accepting, they may be sworn and qualified according to law, and whatever results, to proceed according to law. I, Don Miguel Teran, constitutional alcalde of this precinct, and surveying judge in this case, so decreed, ordered, and signed it in regular form of law.

I attest.

MIGUEL TERAN.
JULIAN MONTANO. [SCRAWL.]

Immediately thereafter I, the surveying judge, by virtue of the foregoing order, summoned to this court the person of Don Lucio
171 Gomez and notified him of his appointment as agent of the public treasury for the survey, and, being informed of it, said that he hears it, and he signed with me in the regular form of law and my assistants.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO. [SCRAWL.]

Thereafter, the person of Don Luis Gomez being present, the appointed agent of the treasury, I put him under oath in due form of law, by God our Lord and the holy cross, under which and the penalties he offered to faithfully and legally discharge his commission, protesting not to defraud the public treasury or allow anything to be done contrary to the benefit of the same, which he will do without injury, fraud, corruption, or deceit, in accordance with the oath he has taken. He said he was over twenty years old, married, and a citizen, and he signed it before me and my assistants according to law.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO.

I, the said alcalde and judge of survey, having seen the acceptance and oath of the appointed agent of the public treasury, Don Lucio Gomez, said that I accepted and I do accept it, and to that end I interposed and do interpose my authority and judicial decree, and by it I gave and do give him power and faculty as much as in law is required and be necessary to make it full and binding; that in the name of the public treasurer may perform every act, agency, and process that the same would do for itself (the treasury) on the subject, and by these presents I so decreed, ordered, and signed in the ordinary form.

I attest.

MIGUEL TERAN.

Assistant:
JULIAN MONTANO.
Assistant:

On the same day and year I, the named alcalde and judge of survey, with prior accord of the fiscal agent (of the treasury) named, I summoned and there appeared before me at this court the persons named, Don Ramon Benites, Don Teodore Aros, and Don Luis Aragon, who being present, I notified their appointment of the charges of surveyors, appraisers, and compass man, and each one and altogether and in
172 common said they were willing to accept and did accept the said charges, and they signed it before me, the fiscal agent, and witnesses assisting, with whom I act according to law.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ, *Fiscal Agent.*
TEODORO AROS.
RAMON BENITEZ.
LUIS DE ARAGON.
JULIAN MONTANO. [SCRAWL.]

Thereafter following, with the prior accord of the fiscal agent named, and in virtue of the acceptance made by D. Ramon Benitez, D. Teodoro Aros, and D. Luis Aragon, whom I certify are personally known to me each and altogether, and other formalities, took oath, which they did in due form of law, by God our Lord and the holy cross, under which and

the penalties they offered to act faithfully and legally, consistent with their knowledge and understanding, in the adjustment of the land, without fraud or deceit.

In witness whereof and due observance of the same they signed it before me, the fiscal agent, and my assistants, with whom I act in the ordinary form according to law.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ, *F. A.*
RAMON BENITEZ.
LUIS DE ARAGON.
JULIAN MONTANO. [SCRAWL.]

Having seen the acceptance and oath made by the officers of appraisement and compass man in the present proceeding, I said that I accepted them and do accept them as experts to survey, appraise, and compass man, for which purpose I would interpose and do interpose my authority and judicial decree, giving as I do give them by these presents all power and authority necessary that they may, after examin'g the lands, pastures, forests, springs, and pools, according to their species, quality, and circumstances, adjust and appraise them, with the legality and scrupulosity required on the subject, and by these presents I so decreed, ordered, and signed it, with my assistants, according to law.

I attest.

MIGUEL TERAN.
TEODORO AROS.

Assistant:
JULIAN MONTANO.

On the third day of the month of May I, the said alcalde and judge of survey of these proceedings, said that, inasmuch as the process of appointing the necessary officials had been concluded, there being no neighboring owners to summon, let publication by posting be made, calling
173 whoever may think himself entitled, and by these presents let it be known that on the sixth of the present month, as the time when they will be heard, attended to, and awarded them their dues, that they may ask and may have in the premises, and by the present I so decreed, ordered, and signed in due form.

I attest.

MIGUEL TERAN.
JULIAN MONTANO. [SCRAWL.]

Forthwith the publication provided for in the foregoing order was posted. In witness whereof and for the proper effects of the same in law, I make this, which I signed with a scrawl. Having summoned Don Manuel Antunes, and he having answered on the 17th of the present month, what may be seen by the proceeding which I order to be annexed to the expediente that it may have the effects attached to it in law, let him be present at the process of survey.

And by the present I so decreed, ordered, and signed according to law.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
JULIAN MONTANO. [SCRAWL.]

Answering your communication of the 16th instant, I will be present at the place you summon me, concerning the survey of the lands in favor of Don Jose de Jesus Perez, which is to be done on the San Pedro River, and there I will designate the land which I am almost ready to register, complying eventually with the requirements for settlement with His Majesty, and in case such survey should extend over the lands that I will designate as having been occupied by me for the period of two years with my cattle, in such case I will make an adverse claim, and bid for them as I may think proper.

God bless you many years.

Terrenate, May 17th, 1821.

MANUEL ANTUNES. [SCRAWL.]

At the place called San Pedro, on the eighteenth day of the present month and year, I, the same alcalde, the fiscal agent being present, also the officers, surveyors, appraisers, and compassman, before my assistants, personally appeared Don Manuel Antunez, and said that they could survey from the house of San Pedro, going down the river, as by following that route no damage would result to him; but going up the river it would be hurtful to him, as he considered himself in possession there, and those lands being included in the sitios he occupies and which he expects from day to day to be adjudged to him, which being declared by the said Antunes, and heard by the attorney in fact, Don Rafael Salas, this one excepted to the damage that would result to his principal by depriving him of the water coming from the cienega (marsh) which
174 is the source of the water course in this locality, in which case it would be useless to make the survey on behalf of his principal. On this subject Antunez and Salas entered into a controversy, until, in view of the trouble, expenses, and injury that would result to either of them, being conciliated, they made concessions and agreed to demand each one-half of the water of the cienega (marsh) for the use of the farms, obliging themselves by these presents to harmony, and so they bound themselves, Antunes for himself and Salas in the name of his principal, in which terms I noted it down as part of this process, which was signed with me by the fiscal agent and other officers, before the assistance with whom I act in the ordinary form in default of clerk, there being none in the manner provided by law; all of which I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
RAFAEL SALAS.
RAMON BENITES.
TEODORO AROS.
JULIAN MONTANO. [SCRAWLS.]

Survey.

On the same day, month, and year, being on the spot, and the interested parties having agreed in the presence of the fiscal agent and other officers, I ordered the erection of a corner monument and square, from which, taking the direction from the southeast to the northwest, there were measured and counted fifty cords, the last ending, going from the

house down the river, on the banks of the ford at the falls, where I ordered put a cross monument, and from there were measured and counted fifty cords, the last ending in the valley itself near a hill, distant three cords, where I ordered put a corner monument, and from it were measured and counted fifty cords, the last one ending in front of the Guachuca Mountains, where I ordered put a cross monument on a rocky hill, and from it were measured and counted fifty cords, the last ending on a bushy table-land, where I ordered put a corner monument, and from there were measured and counted fifty cords, the last ending at the gulch of Bachata, where I ordered put a cross monument for a general squaring, confining, and dividing line enclosing this header and in the figure of a true square two hundred cords, which make two and a half leagues.

(NOTE BY TRANSLATOR.—There is no sense in this sentence in Spanish, but it is intended to mean "that this line was the side of the square.")

(There were measured 250 cords, but he calls it "200.")

(100 cords make one league, 200 cords makes only 2 leagues.)

And from there, pointing the compass and taking the direction from the northwest to the southeast, there were measured and counted fifty cords, the last ending in the middle of the valley of San Pedro
175 River, where I ordered put a corner monument, and from there in the same direction were measured and counted fifty cords, the last ending, after passing the river, at the foot of a hill, where I ordered put a cross monument, and from it were measured and counted fifty cords, the last ending on the dry creek of Los Barras, where I ordered put a corner monument, and from it were measured and counted fifty more cords, the last ending on a black mound, where I ordered put a cross monument, and from there were measured and counted fifty cords, the last ending at the descent of the Picacho, where I ordered a corner monument, general square, this line being two hundred and fifty cords, which are two and a half leagues for the side, when, being already late, these operations were suspended, to be continued the following day.

In testimony of which I noted it down as part of the proceedings and signed it with the fiscal agent, officers, interested parties, and those of my assistance.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
JOSE RAFAEL SALAS.
TEODORO AROS.
RAMON BENITEZ.
JULIAN MONTANO. [SCRAWLS.]

(May 19, 1821.)—On the nineteenth day of the same month and year, with the prior attendance of the fiscal agent and other officers being on the spot, at the corner and general square monument, the compass being pointed and the direction taken from the northeast to the southwest, there were measured and counted fifty cords, the last ending in a thick forest, where I ordered put a cross monument, and from it were measured and

counted fifty other cords, the last ending at the dry creek "Del Malpais," where I ordered put a corner monument, and from it were measured and counted fifty cords, the last ending at the ascending slope of a red table-land, where I ordered put a cross monument, and from it were measured and counted fifty cords, which ended, the last, on the same table-land, where I ordered put a corner monument, general square, confining and dividing line, from which, taking the direction from the southwest to the northeast, there were calculated as measure, the country being impassable, two hundred and fifty cords, which are two and a half leagues, with which operation four sitios of land for raising of cattle were located, headed, surveyed, and centered without damage to any person, thanks to the agreement entered into.

(NOTE BY TRANSLATOR.—The surveys given here call it a square of 2½ leagues on a side, and this is calculated by the alcalde as 4 square leagues or sitios, but such square of 2½ leagues on a side give' 6¼ sitios or square leagues.)

And so that it may have the effects proper in law I set it down
176 as part of the proceedings, which I signed with fiscal agent, officers, interested party, and my assistants, with whom I act in the ordinary form of law.

I attest.

MIGUEL TERAN.
LUCIO GOMEZ.
JOSE RAFAEL SALAS.
TEODORO AROS.
RAMON BENITES.
JULIAN MONTANO. [SCRAWLS.]

SAN PEDRO, *May 21st, 1821.*

The survey being finished, let the proceedings of appraisement by the appointed inspector', D. Ramon Benitez and D. Teodoro Aros, with the prior acceptance of their charge; which having been done, let other proceedings be continued as in law corresponds, and by these presents I so decreed, ordered, and signed in the ordinary form.

I attest.

MIGUEL TERAN.
JULIAN MONTANO. [SCRAWLS.]

Forthwith, and in virtue of the foregoing order, in the presence of the appointed fiscal agent, being present the appraising officers, D. Ramon Benitez and D. Teodoro Aros, I notified them personally that under the charge which they have accepted they should appraise and value the land comprised in this survey, which then having understood, said, each together and with common accord, that in consideration of the examination they had made with their eyes and inspectors of the lands while surveying them they *they* valued the three first sitios at sixty dollars each and the remaining one at ten dollars; that this appraisement, according to their faithful knowledge and understanding, is the just and legal value of them, as much on account of the situation of the lands as because it is the common gate of the going and coming of the barbarians

enemies; as this fact is public and notorious, frequent and well known, is the true inwardness why these proceedings are so executed as it is possible to do under the circumstances, without there being any fraud, malice, collusion or deceit, conspiracy or fear, because they only minded the oath they have given.

In testimony of which they sanctioned and signed with me, the fiscal agent, and those of my assistance with whom I act in the ordinary form.

MIGUEL TERAN.
LUCIO GOMEZ.
RAMON BENITEZ.
TEODORO AROS.
JULIAN MONTANO. [SCRAWLS.]

The four sitios having been appraised and valued, I said, Hand this expediente to the fiscal agent appointed, so that as far as it goes to examine it for the benefit of the public treasury he may act in the matter properly.

177 And by the present I so decreed, ordered, and signed according to law.

I attest.

MIGUEL TERAN.
JULIAN MONTANO. [SCRAWLS.]

JUDGE SURVEYOR:

The fiscal agent appointed in this case says that inasmuch as he with his own eyes has examined the lands, run over the various parts, approaches, lines, and the more or less abundance of pastures, waters, forests, and properties of the land, he considers just and legal and without loss to the public treasury because its occupation and settlement of it is for the benefit of this and of the whole nation; that on that account he is of the opinion that information proving the ability of the claimant should be instituted, for which let three honest and truthful witnesses be summoned and let them say, with respect to possession——

1st. If they know the party, and with respect to the general of the law.

2d. If they know of their own knowledge or by hearsay *of* the claimant, Don Jose Jesus Perez, has sufficient cattle to occupy these sitios.

3d. If by the occupation and settlement it may not result great benefit to the public treasury and the nation.

And this having been done you will please send me the information to pass upon it as in law is required. So says for the present the subscriber.

Fronteras, May 22, 1821.

LUCIO GOMEZ. [SCRAWL.]

Let the information requested by the appointed fiscal agent be taken, for which purpose let summons be issued for Don Jose Yloyes, Don Felix Quijada, and D. Francisco Ramirez, who, with the prior notification of the party, should be sworn; which done, let the proceeding go on; and by the present I so decreed and signed according to law. I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWL.]

Immediately I summoned and Don Jose Hoyos appeared in this court, who, being confronted with the fiscal agent, was sworn in due form of law, by God our Lord and the holy cross, under which he promised to tell the truth in all he knew and might be asked, and, being asked in the manner contained in the foregoing interrogatory, said:

First. That he knows Don Jose Jesus Perez and the generals of the law do not concern him.

To the second: That he knows of his own knowledge that he has sufficient cattle to occupy and settle these lands, as it is a public and notorious fact; and he answers to the third that, in his opinion, it will be
178 beneficial to the public treasury and to the whole nation and from it will result, without hinder, the traffic, commerce, and industry and the other liberal and industrial arts.

That this is the truth in faith of the oath he has taken. He said he was married, of twenty-nine years of age, a citizen, and he signed it with me and my assistants according to law. I attest.

MIGUEL TERAN.
JOSE HOYOS.

Ass.: RAFAEL YESCAS.
Ass.: JULIAN MONTANO. [SCRAWLS.]

Forthwith I summoned Don Felix Quijada and he appeared in this court, whom I certify to personally know. I administered to him the oath, which he took before the fiscal agent, by God our Lord and a holy cross, under which he promised to tell the truth in all he knew and might be asked, and, being asked as to the contents of the foregoing interrogatory, said:

First. That he does know Don Jose Jesus Perez and the generals of the law do not concern him.

To the second: That he knows by hearsay that the party claimant has sufficient cattle to occupy and settle the place mentioned; and answers to the third that it is public and notorious the opinion the advantage resulting to the public treasury and the nation by the occupation and settlement of deserted places.

That this is the truth under the oath taken. He said he was unmarried, of twenty-five years, a citizen, and he signed it with me and my assistants according to law. I attest.

MIGUEL TERAN.
FELIX QUIJADA.

A.: RAFAEL YESCAS.
A.: JULIAN MONTANO. [SCRAWLS.]

On the same day, month, and year I summoned Don Francisco Ramirez and he appeared, to who', before the fiscal agent, I administer' oath, which he took under the due form of law, by God our Lord and a holy cross, under which he promised to tell the truth in all he knew and might be asked, and, being asked as regards the foregoing interrogatory, said:

To the first: That he knows D. Jose Jesus Perez, and that the generals of law do not concern him.

To the second: That he knows by hearsay that he has sufficient cattle to occupy and settle this grant.

To the third: That to all appearances it is not to be denied the settlement of it would be a benefit to the public treasury and the nation.

That this is the truth, in his judgment. He said he was married, forty years old, a citizen, and did not sign because he knew not how. I did so with my assistants, with whom I act in the ordinary form, according to law. I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

179 The information required by the fiscal agent being finished, let it be handed to the named agent, so that he may do what is proper. I so decreed and signed it according to law.

MIGUEL TERAN. [SCRAWL.]

SURVEYING JUDGE:

D. Lucio Gomez, fiscal agent appointed in this survey, says that, having seen the condition of the expediente, it and from it according to its progress, it appears beneficial to the public treasury and of all the nation, the occupation and settlement of the place called San Pedro. Therefore, for the benefit of the nation itself and in order to settle, adjudge, and sell to the highest bidder, you will please publish for thirty consecutive days the appraisement made, accepting the bids, offers, and higher prices resulting, and reserving their rights for the day of final disposition, which shall take place at the capital of Arispe, in the temporary assemblage of the royal treasury board, presided over by the intendant governor of the province, who will set the day of auction and perform all the other requirements according to the universal practice according to law required.

It is all that has to say the subscriber, submitting his judgment to the probity of the wise Government and the literary knowledge of the enlightened governor of the province.

Fronteras, 26th May, 1821.

LUCIO GOMEZ. [SCRAWL.]

FRONTERAS, *27th of May, 1821.*

Having seen the opinion of the said fiscal agent, I said: Let publication be made for the auction of the place called San Pedro, with its appraisement, receiving the bids and better offers, and by the present I so decreed, ordered, and signed it according to law. I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWS.]

On the same day, month, and year I, the surveying judge, caused publication to be made with beating of drums, which was done by Lazaro Quijada in clear and intelligent voice, as follows:

Be it known publicly and openly that D. Jose Jesus Perez has registered the place of San Pedro, and, his demand being admitted, there were measured or located and segregated four sitios of land for cattle, which were appraised and valued in the sum of one hundred and ninety dollars.

In consequence, anyone who thinks he has a right, has the means, and desires to offer bids for the land surveyed, let him present himself, and his bid will be accepted and his rights will be kept until the day of final auction, which will take place at Arispe the day that may be appointed by the intendant governor of the province, for which purpose his rights will be preserved; and, no bidder *and no bidder* appearing, I put it down as part of the proceeding, which I signed, with those of my assist-
180 ance, according to law. I attest and in this paper without prejudice to the royal treasury.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 28th day of the same month and year I, the said alcalde, caused, with beating of drums and by the voice of the crier, to be offered at auction the location and valuation of the place of San Pedro, and, there being no bidder, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 29th day of the said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidder, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 30th of the present month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidder, I noted it down and signed it according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 31st day of said month and year I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place San Pedro, and, there being no bidder, I noted it down and signed it according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the first (1st) day of June of the year 1821 I, the alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidder, I noted it down and signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

181 On the second day of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed with those of my assistance according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 3d day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 4th of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down and signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

NOTE BY TRANSLATOR.—"Offering for sale the location and appraisement" is neither Spanish nor English, but that it is the way Miguel Teran puts it.

On the 5th of said month I, said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down and signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the sixth day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the

location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down and signed with those of my assistance according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

182 On the 7th day of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidder, I noted it down and signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 8th of the present month I, the same alcalde, caused, with the beating of drums and the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidder, I noted it down and signed it according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 9th day of said month I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the tenth day of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the eleventh day of said month and year I, the judge-surveyor, caused, with the beating of drums and in high, clear, and intelligible voice, Lozaro Quijada to say:

Let it be known publicly and openly that D. Jose Jesus Perez has located the place of San Pedro, and, his request having been granted, four sitios of land for cattle were surveyed and segregated, which were appraised in the sum of one hundred and ninety dollars. Therefore let anyone apply who thinks he has the right, means, or has a desire to make a bid for the said land and his bid will be accepted, which will be kept until the final day of the auction, which will be at

Arizpe on the day designated by the intendente governor
183 of the province, for which time the bids will be kept; and, there being no bidder, I noted it down, which I signed, with my assistants, according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 12th day of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidder, I noted it down, which I signed in due form of law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 13th day of said month I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 14th of said month I, the alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 15th day of said month I, the same alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 16th day of the same month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered
184 for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 17th day of the same month and year I, said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I set it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 18th day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWL.]

On the 19th day of the present month I, the named alcalde, caused, with beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 20th day of said month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the — San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 21st day of this month I, the said alcalde, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

185 On the 22d day of the same month I, the said alcade, , with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisemet of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.
A.: JULIAN MONTANO. [SCRAWLS.]

On the 23d of the said month, I, the said alcade, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 24th day of said month I, the same alcade, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and appraisement of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 25th day of the same month I, the named alcade, caused, with the beating of drums and by the voice of the crier, to be offered for sale the location and valuation of the place of San Pedro, and, there being no bidders, I noted it down, which I signed according to law.

I attest.

MIGUEL TERAN.

A.: FELIX QUIJADA.

A.: JULIAN MONTANO. [SCRAWLS.]

On the 26th day of the present month and year I, the constitutional alcade and surveying judge of these surveys, said that the surveying proceedings having been finished that they be forwarded to his lordship the governor intendente, so that his lordship may dispose of it as it may suit his superior pleasure, and by the present I so decreed, ordered, and signed before those of my assistants and on this paper without prejudice to the public exchequer.

I attest.

MIGUEL TERAN.

A.: JOSE HOYOS.

A.: FELIX QUIJADA. [SCRAWLS.]

186 Hon. GOVERNOR INTENDENTE:

I send to your hands the proceedings of the surveys, examination, appraisement, and public auction, executed for the deserted place situated on the San Pedro, in favor of D. Jose Jesus Perez, so that you may do what is just. May God preserve your excellency many years.

Fronteras, 26th of June of 1821.

MIGUEL TERAN.

Hon. Governor Intendente Don Antonio Cordero, Arispe, 9 of July of 1821, to the fiscal attorney, Cordero. Scrawl.

Hon. INTENDENTE:

The fiscal attorney of this intendency says that these proceedings of survey, appraisement, information of competency, and publication of four sitios of public land for raising cattle comprised in the location

called San Pedro, situated in the jurisdiction of the presidio of Fronteras, appraised in the sum of one hundred and ninety dollars, at the rate of sixty for each of the first three and of ten dollars for the rest; and surveyed in favor of its claimant, Don Jose Jesus Perez, resident of this city, are in conformity in every particular with the royal and superior instruction' that regulate such matters. This is supposing and taking into consideration the declarations stated in the petition of the interested party, as that land is subject to the hostilities of the Apache enemies vexing that frontier, while the settlement of it is very desirable and advantageous to the settlement of the same.

The fiscal attorney of the public treasury requests, if it so pleases you, to issue order for the citation of parties and proceed to make the three corresponding auctions asking for bidders for the said surveyed land, to be knocked down in the last of them to the highest bidder who may appear, making it known to this one to pay to the treasury the value for which may be sold said four sitios, the half per cent dues, and the 18 per cent for exchange, 2 per cent demanded as a general charge, and three dollars for the officials attached to the quartermaster-general of the Army; and after this expediente has been examined and approved by the provincial board, adding the proper certificates as to the above payments, to report the same to the superior treasury department for the disposition that may be proper. This is my opinion, which I had not expressed till now, as the expediente had been misplaced, but nevertheless you may do as you think best.

Arispe, June 25 of 1822.

FRANCISCO PEREZ. [SCRAWL.]

ARISPE, *July 3 of 1822.*

As suggested by the fiscal attorney to this intendency in the forgoing answer, let the three public auctions take place for the lands named San Pedro, described in these proceedings with the prior notification to the agent of the interested party, Don Jose M. Serrano. The hon.
187 intendente of the province so decreed, ordered, and signed it, with the assistant witnesses, in default of the secretary.

BUSTAMANTE. [SCRAWL.]

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [SCRAWLS.]

Forthwith being present Don Jose Ma. Serrano, he was notified of the opinion of the fiscal attorney and the act of approval that precedes, and, being informed, he signed it with the hon. intendent and his assistant witnesses.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.
As.: ANTONIO APALATEGUI. [SCRAWLS.]

1st auction.

In the city of Arispe, on the 3d day of the month of July of one thousand eight hundred and twenty-two, assembled at this capital the board of auction, the ho. intendent as president and the members composing it, in order to be put into effect the first auction of the lands

described in this expediente. They caused with the beating of drums the assemblage at the office of this intendency of many people, and in their presence the crier, Loreto Salcido, was ordered to make publication, as in fact he did so, in a high and clear voice, saying:

There is going to be auction by this board of auction—four sitios of public land for raising cattle, comprised in the location called San Pedro, situated in the precinct of Fronteras, surveyed in favor of Don Jose Jesus Perez, of this city, and appraised in the sum of one hundred and ninety dollars, at the rate of sixty—each one of the first and of ten dollars for the rest. Whoever wants to bid for the said public land let him come to do so before this board, where will be accepted whatever he makes, with the understanding that on the third and last auction, to take place the day after to-morrow, the property will be knocked down to the best and highest bidder.

And there being no bidder, it was set down in the proceeding', which were signed by the president and other members of the board of auction.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ. [SCRAWLS.]

2d auction.

In the same city, on the 4th day of the same month and year aforesaid, they proceeded to celebrate the second auction of this expediente in the same terms as the first and foregoing one, with the only difference of saying to the public that to-morrow the sale would be finished.

188 But there being no bidder, this was noted down, which was signed by the president and the members of the board of auction.

BUSTAMANTE.
FUENTES.
ELIAS GONZALES.
PEREZ. [SCRAWLS.]

3d auction.

At the city of Arispe, on the fifth day of the month of July of one thousand eight hundred and twenty-two, assembled as a board of auction at this capital, the hon. intendente as president, and the other members that compose it, for the purpose of making the third and last auction of the lands referred to in these proceedings, *which* with the beating of drums and by the voice of the crier, many people were assembled at the office of this intendente, in the presence of whom it was ordered that Loreto Salcido should make a call, and in fact he did so, equal in every particular as at the previous auction, with the only difference that he announced to the public that to-day the sale would be made to the best and highest bidder. That having been done, appeared D. Jose Ma. Serrano, as the agent of D. Jose Jesus Perez, offering again the appraised value of the land, and, being already the hour of prayer of twelve o'clock meridian, the crier said at last: One, two, three; going, going, going; good, good, may it do good to D'n Jose Jesus Perez.

In this manner was this proceeding finished, the four sitios of public land concerned in this expediente being solemnly sold in favor of the interested party for the sum of one hundred and ninety dollars, in witness whereof it was noted down, which was signed by the agent, Don Jose Ma. Serrano, with the president and the members of the board of auction.

BUSTAMANTE.
FUENTE.
ELIAS GONZALES.
PEREZ.

ARISPE, *6th of July of 1822.*

Let this expediente, with the proper certified statement of the superior orders on the subject, be forwarded to the agent, Don Jose Ma. Serrano, so that within three days he may make any observations in favor of his principal on the subject, notifying him to appoint, in Mexico, an agent to attend to it in that court. So the intendente of this province decreed and signed it with the witnesses of his assistance.

BUSTAMANTE.

As.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [SCRAWL.]

NOTE.—On the same day, month, and year the expediente, with the aforesaid certificate, was delivered to the agent. Scrawl.

189 Hon. INTENDENTE:

Don Jose Ma. Serrano, as agent for D. Jesus Perez, of this city, appeared before you and says: I make prompt return of this expediente and of the certified testimony of the lands known as San Pedro, which were handed to me. On doing so I express myself satisfied with every act up to the public auction, as everything has been done according to the regulations and superior orders concerning the matters and thing' comprised in said testimony, and I only have to request you to order the prompt conclusion and termination of this expediente, so that, the approbation of the superior board being obtained, the proper title of grant and confirmation of—

(Admit to composition meant that the King waived all shortcomings in the proceedings and accepted them on their face as true.—TRANSLATOR.)

the four sitios contained in the said land may be issued, being ready to appoint in Mexico an agent duly empowered to take care of the business in that court.

Wherefore I request and beg of you to order as I petition, because in this my principal will receive favor and gift. I swear not to proceed with malice, &c.

JOSE MA. SERRANO. [SCRAWL.]

Acted upon at sight, in the city of Arispe, on the sixth day of the month of July of one thousand eight hundred and twenty-two.

The hon. intendente ad interim of the province of Sonora and Sinaloa, minister and treasurer, D. Ygnacio de Bustamante y Valasco, having seen these proceedings of survey, appraisement, publications, auctions

and sale of the lands of San Pedro, surveyed for raising of cattle and horses, in favor of Don Jose Jesus Perez, neighbor of this city, and located in the precinct of Fronteras, the answer made by his agent, Don Jose Maria Serrano, in the foregoing writing, with everything else appearing and proper to see, said that declaring as he does declare the said proceedings sufficiently in form and in accord with the regulations prescribed by the superior orders now in force on such matters, and admitting as he does immediately admit to settlement with the imperial treasury the said parcel of the royal lands by Don Jose Jesus Perez, he should order and he does order that his agent be notified to pay into this treasury the sum of two hundred and eight dollars and one grain, in this form: One hundred and ninety dollars as the value for which were sold to said interested party four sitios contained in the surveyed land; eleven dollars and one real eight grains, as the half per cent import and the 18 per cent for exchange; three dollars six reals and five grains, corresponding to the 2 per cent imposed as a general tax, and three dollars as dues belonging to the old extinct office; and this sum having been paid, adding for it the proper certificate to this expediente, report should be made of the same to the superior board of the treasury for its approbation or the determination that may be proper.

190 The hon. intendente by this act so provided, ordered, and signed, with assistant witnesses in default of clerk.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [SCRAWLS.]

Immediately the agent, D. Jose Ma. Serrano being present, he was notified of the foregoing act, of which he became cognizant, and he signed it with the hon. intendente and assistant witnesses.

BUSTAMANTE.

A.: JOAQUIN ELIAS GONZALES.
A.: ANTONIO APALATEGUI. [SCRAWLS.]

BOARD OF THE PROVINCIAL IMPERIAL TREASURY,
Arispe, 7th of *1822.*

Approbation.

Let it be declared forthwith as legally, publicly, and solemnly sold at public auction, in this capital, on the 5th of the present month, in favor of Don Jose Jesus Perez, of this city, the four sitios of public land for raising cattle, comprised in the location called San Pedro, situated in the precinct of the presidio of Fronteras, for the sum of one hundred and ninety dollars, its just value; and therefore let report of this expediente be made to the superior board of the treasury for its approbation, or the public determination, as has been ordered by this intendency in the foregoing act. So it was ordered and signed by the gentleman president and other members of the provisional board.

BUSTAMANTE.
FUENTE.
ELIAS GONZALES.
PEREZ. [SCRAWLS.]

ARISPE, *7th of July, 1822.*

Let the order of the provincial board of this intendency in the foregoing communication be executed.

BUSTAMANTE. [SCRAWL.]

Antonio Carrillo, commissary of the treasury of Arispe for the State of Sonora, certifies—

That on page 55 of the journal for the year 1822 the following entry is found:

July 8th.—Charged two hundred and eight dollars and one grain, which was paid into this treasury in the name and as the agent of D. Jose Jesus Perez, resident of this city, in this form:

190 dollars, as the principal value in which were sold by the intendency four sitios of public land for raising cattle, comprised in the location named San Pedro, situated in the precinct of Fronteras.

11 dollars one real and 8 grains for the half per cent impost and the 18 per cent, 3 dollars 6 reals 5 grains ordered to be paid as a gen-
191 eral tax, and three dollars as the duty for the extinct office of the treasury, as is provided by the communication of the intendency known as No. 30.....$208 0 1

FUENTE.
GONZALES.
JOSE MA. SERRANO.

In witness whereof I give the present in duplicate, at the request of the hon. treasurer-general of the State, D. Jose Maria Mendoza, in this common paper, as there is none of the official paper to be found at Arispe, on the twenty-fifth of October of one thousand eight hundred and thirty-two (1832).

ANTONIO CARRILLO. [SCRAWL.]

HON. TREASURER-GENERAL:

Ygnacio Perez, in the name of his brother, Jose de Jesus Perez, before you, in the proper form, I appear and say that by the original expediente which I deliver into your hands, you will be good enough to note that on the 5th of July of 1822 the land called San Pedro, situated in the jurisdiction of Fronteras, comprising four sitios of land, was sold at auction to my said brother, and having transferred his rights therein in due form of law to Rafael Elias, and inasmuch as the corresponding title of grant has not yet been issued, I ask and pray to your excellency to order the issuing of the proper title in favor of the citizen Rafael Elias as the present owner and proprietor of the land of San Pedro, favor which I trust will grant me, swearing not to act in malice.

Arispe, 25th of October of 1832.

YGNACIO PEREZ. [SCRAWL.]

ARISPE, *October 25 of 1832.*

Presented with the accompanying expediente.

Let the proper report be made to the supreme government of the State, in compliance to what is provided in article 28 of law No. 30 of May 20 of 1825, for the orders that may be convenient.

The treasurer-general of the State of Sonora so provided, ordered, and signed it with assistant witnesses according to law.

MENDOZA.

A.: MARIANO ROMO.
A.: JOSE MA. PEREZ. [SCRAWLS.]

ARISPE, *31st of October of 1832.*

Let a copy of the consultation made to the supreme government and the original resolution of the same be annexed, and by virtue of it let the proper title grant be issued in favor of the citizen Rafael Elias for four sitios of land at the location of San Pedro. The treasurer-general of the State so provided, and signed it with the assistant witnesses according to law.

MENDOZA.

A.: LUIS CARRANCO.
A.: BARTOLO MIRANDO. [SCRAWLS.]

192 TREASURY-GENERAL OF THE STATE OF SONORA.

YOUR EXCELLENCY: The citizen Ygnacio Perez, of this city, has placed in my hands with the proper communication the expediente, which I have the honor to place in yours, containing the registry, survey, appraisement, publication, and auction sale of four sitios of land in the place named down the San Pedro River in favor of the citizen Jose de Jesus Perez. It appears by the certificate annexed also to the expediente that he paid to the national treasury of this capital the sum of two hundred and eight dollars one grain as the value of the land and the repective dues, and lastly, he asks that, he having made an exchange of the land in favor of the citizen Rafael Elias, the titled be issued in favor of this, complying at the same time with article 27 of the law No. 30 of May 20th of 1825, and this treasury in giving you this, in conformity with the 28th of the same law, has the honor to inform you that he considers as sufficient, legal, and completed with all the formalities established by law the said expediente to be issued thereupon, the title asked for; nevertheless you may do as may please your superior pleasure.

God and liberty.
Arispe, 25th of October, 1832.

JOSE MA. MENDOZA.

To his excel. the GOVERNOR OF THE STATE.

Copy.
Arispe, October 25th, 1832.

MENDOZA. [SCRAWL.]

A seal that says: Government of the free State of Sonora.

Having examined the expediente for lands which you accompany with your note of the 25th of this ending month, comprising four sitios surveyed at the locality named down the San Pedro River in favor of Don Jose Jesus Perez, I return it to you so that you may issue the title to

Don Rafael Elias, as it belongs to him by the exchange made of it to him by Don Ygnacio Perez, of this city.

God and liberty.

Arispe, October 31st of 1832.

YGN'O DE BUSTAMANTE. [SCRAWL.]
LUCIO RODRIGUEZ,
1st Officer. [SCRAWL.]

TREASURER-GENERAL OF THE STATE:

The foregoing documents having been annexed to the original expediente, this was concluded with all the requisites and formalities established by the laws remaining in the custody of the archives of this treasury-general as a perpetual witness thereof.

Wherefore in the exercise of the powers conceded on me by the laws by these presents and in the name of the sovereign State of Sonora
193 I grant title to four sitios of land for raising cattle and horses comprised in the location aforesaid at San Pedro, in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, to whom I grant, give, and adjudicate said lands by way of sale and with the quality, firmness, and stability established by the laws for himself, his sons, heirs, and successors, with all its ingresses and egresses, uses, customs, timber, forests, pastures, waters, springs, pools, and other things belonging to it, with the very precise and exact condition that they must settle and occupy said lands without leaving them unprotected, deserted, or unsettled for any time, with the understanding that if such would happen for the period of three years consecutively and there should be any person to petition for them, in such event, with the prior justification of the fact, they shall be declared public land and may be granted anew to the highest and best bidder, excepting, as it is just it should, those cases in which the abandonment took place by reason of the notorious invasion of the enemy, and only for the period of such happenings, reminding the citizen Rafael Elias, as he is reminded, that he must confine himself to the limits of the land, its belongings, boundaries, and monuments, specified in the foregoing proceedings of survey, observing and exactly obeying art. 30 of law No. 30 of May 20 of 1825, which provides for the maintenance on the boundaries — monuments of stone and mortar, under the penalty of twenty-five dollars which they will incur in default for the benefit of the common, in which case the same to be constructed at the expense of the interested party by the local justice.

And I order and command the judges, courts, and authorities of the locality, the present and the future of this capital, that on behalf of the well and prompt administration of justice and in compliance with the laws on the subject that they do not allow the said interested party nor his successors to be in any manner perturbed, disquieted, nor molested in the free use of the property, dominion, and possession of the aforesaid four sitios of land comprised in the named location of San Pedro; on the contrary, they should watch and constantly take care, with the greatest vigilance and activity, that they be protected and maintained always in the quiet and pacific possession to which they are entitled in law, so that in that manner they may freely sell, exchange, give, transfer, grant, and mortgage said lands at their will and free option as owner and absolute proprietors.

In which terms I issued the present title in due form granted in favor of the citizen Rafael Elias, his sons, heirs, and successors, delivering it to them for their protection, with the prior annotation made of it in the proper book.

Given in this capital of Arispe on the 8th day of the month of May of one thousand eight hundred and thirty-three, authorized and signed by me and sealed with the seal of this treasury-general, before the undersigned witnesses of my assistance, in default of clerk, which there is not.

JOSE MARIA MENDOZA.

A.: MARIANO ROMO.
A.: LUIS CARRANCO. [SCRAWLS.]

194 [Seal Treasury-General of the Free State of Sonora.]

Annotation of this title is taken on the proper book existing in this treasury-general on page 12.

[A SCRAWL.] JOSE MARIA MENDOZA,
Treasury-General of the State of Sonora.

I certify that on page 34 of the journal of the present year appears the following entry:

May 8, charge for title to lands, thirty dollars, paid by the citizen Rafael Tubia in the name of the citizen Rafael Elias, resident of this capital, for the value of the title duly issued by this treasury-general to-day in favor of the said Elias of four sitios of land for raising cattle and horses comprised in the location called San Pedro, in the jurisdiction of the presidio of Santa Cruz, and of this payment is issued the proper certificate, $30.00

MENDOZA.
MILLA.
RAFAEL ZUBIA.

In witness thereof, where it may do the most good, I give the present at Arispe, on the eighth of May, one thousand eight hundred and thirty-three.

JOSE MARIA MENDOZA.

It is a copy.

URES, *of 1855.*

It agrees with the original, from which it is faithfully taken, corrected, and concorded, with the proper seal, in eight good leaves, to-day, July the ninth, of one thousand eight hundred and fifty-five.

In witness whereof I authorize and sign it, with my assistants.

JOSE BUSTAMANTE.

A.: J. ESTRELLA CORDOVA.
A.: A. J. RAMON ROMO. [SCRAWLS.]

Dues to be paid: For three and a half leaves of paper, at 6 reals, $2.5; for comparing, 6; total, $3.3.

Ures, July 10th, of 1855.

BUSTAMANTE. [SCRAWL.]

Dues of the collector, four reals.

Vo. Bo.

PEDRO FERNANDO SALDANANDO. [SCRAWL.]

Ygnacio Pesquiera, military commander of the district of Ures, capital of the department of Sonora.

I certify that the signature that appears in the foregoing acts of the civil judge of 1st instance, Don Jose Bustamante, is the same which he uses in all documents which he has signed and authorized as such functionary.

In witness whereof I authorize it with the same date at the request of the interested party.

Y. PESQUEIRA. [SCRAWL.]

195 Faithful and legal copy taken from the original title which exists in the archives of this treasury general. It is corrected and compared in the twenty pages of paper, with the proper stamps corresponding, which I authorized and sign' at Hermosillo on the twenty-second day of the month of July of one thousand eight hundred and ninety-one.

V. AGUILAR.

Ramon Corral, constitutional vice-governor of the State of Sonora and acting governor.

I certify that the citizen Victor Aguilar is treasurer general of the State, as appears by the above signature.

Hermosillo, July twenty-eighth of one thousand eight hundred and ninety-one.

RAMON CORRAL.
ENRIQUE MONTEVERDE, *Secretary.*

[Seal of the State of Sonora.]

I certify that Mr. Bme. Rochin has paid into this office, including the 25 per cent of the federation, five dollars for the dues charged for the authentication of signature made by the governor of the State of that of the treasurer general of the same.

Hermosillo, July 27, 1891.

MANUEL MUNOZ. [SEAL.]

State dues	$4.00
25% Federal	1.00
	$5.00

(Endorsed:) Filed in the office of the clerk Court of Private Land Claims Dec. 3, 1891. Jas. H. Reeder, clerk. Irenio L. Chaves, deputy.

(Pl'ff's Exhibits 9 to 20 and XX follow here, but are omitted in printing, per stipulation.)

(Here follows map marked p. 195a.)

Map of the San Rafael del Valle Private Land Claim. Ex. 21.

(Here follows map marked page 195b.)

FOLDOUT(S

196 PLAINTIFF'S EX. 24.

(Sello.) (Estampillas canceladas.)

Victor Aguilar, Tesorero General del Estado de Sonora, Republica de Mexico.

Certifico: que al folio 11 frente y vuelta del libro de temas de razon de los titulos de merced de terrenos expedidos por la Tesoreria General en el año de 1833 se halla una del tenor siguiente.

"En 8 de Mayo se entregó de gratis al Co. Rafael Elias Gonzales con arreglo á la ley el titulo de Merced que con fecha 25 de Diciembre se expidio a favor de dicho individuo, de cuatro sitios de tierra para cria de ganado mayor y caballada que comprende el puesto nombrado San Rafael del Valle sito en jurisdicion lel presidio de Santa Cruz.

"MENDOZA. [RUBRICA.]"

Y á pedimento del interesado, extiendo el presente en la ciudad de Hermosillo, a los cuatro dias del mes de Abril de mil ochocientos noventa y tres.

V. AGUILAR.

Rafael Yzabal, vice-Gobernador constitucional del Estado de Sonora en ejercicio del Poder Ejecutivo.

Certifico: que el Co. Victor Aguilar, es como se titula Tesorero Gen-.l del Estado y suya la firma que antecede.
Hermosillo, Abril seis de mil ochocientos noventa y tres.

RAFAEL YZABAL.
[SELLO.] RAMON CORRAL, *Sredi.*

Filed in the office of the clerk Court of Private Land Claims Mar. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed:] U. S. Court of Private Land Claims. Juan Pedro Camou vs. United States. P'lt'f' Ex. 24. Copy. Certified copy folio 11, Tema de Razon. William Herring. (13a.)

PLAINTIFF'S EX. 23.

(Seal.) (Stamps cancelled.)

ictor Aguilar, treasurer general of the State of Sonora, Republic of Mexico.

I certify that in the archives of this office is found a title of the lands f the ranch called "San Rafael del Valle," in the presidio of Santa Cruz,
in favor of Mr. Rafael Elias, resident of the city of Arispe, and
197 said expediente consists of 21 folios, all on the proper stamp paper. Said proceedings were executed in the year 1827 by the citizen Pablo Fraijo, constitutional alcalde of the said presidio. The said title is with all the forms of law and is the matrix or expediente nade in the said year.

And at the request of the interested party I issue the present, in the city of Hermosillo, on the fourth day of the month of April of one thousand eight hundred and ninety-three.

V. AGUILAR.

Rafael Yzabal, constitutional vice-governor of the State of Sonora, in the exercise of the executive power.

I certify that the citizen Victor Aguilar is, as he styles himself, treasurer-general of the State and his the foregoing signature.

Hermosillo, April six of one thousand eight hundred & ninety-three.

RAFAEL YZABAL.

[SEAL.] RAMON CORRAL, *Sec.*

Filed in the office of the clerk Court of Private Land Claims, Mar. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Endorsed:) U. S. Court of Private Land Claims. Juan Pedro Camou vs. United States. Translation certified copy of archive. Pl'tf' Ex. 23. William Herring. (14a.)

PLAINTIFF'S EX. 26.

Field notes of the survey of the exterior boundary lines of the San Rafael del Valle private land claim, Cochise County, Arizona.

Surveyed by George J. Roskruge, surveyor.

Survey commenced on the 23rd May; completed June 29th, 1891.

Feet. Commencing at the north centre of claim, which is a post, marked S. R. G. No. 8, set in a monument of stone erected on the summit of a "limy or calcarious knoll or hill," said post having been set by U. S. Deputy Surveyor Solon M. Allis on the 15th day of December, 1879 (as per field notes on file in the office of the U. S. surveyor-general for Arizona), as marking the north centre of the San Rafael del Valle private land claim.

From the said monument on the limy hill the Bronkow hill bears N. 12 21 W.

Mount Wrightson, in the Santa Rita Mountain, bears N. 80 49 W. Highest peak in Huachuca Mountains bears S. 34 50 W. The dwelling house of Cornelius Harrington bears S. 3 10 E., 390 feet distant.

From said monument on limy hill, marked S. R. G. No. 8, I run N. 85 00 E., var. 11 30 E., along the boundary line of the San Rafael del Valle private land claim.

198 1070. To the San Pedro River, course north.

1350. To the Arizona and Southeastern Railroad.

6204. To the northeast corner of the San Rafael del Valle private land claim, a monument on the summit of a bald hill.

Thence S. 13 45 E., var. 11 30 east,

along the east boundary line of the claim.

64850. To the cañada of the Bachata, course N. 65 00 W.

68050. To the southeast corner of the San Rafael del Valle private land claim, a point on the north line of the "Rancho of the San Pedro" (said southeast corner being 6,280 feet from the northeast corner of the "Rancho of San Pedro," built on the south bank of the Cañada de la Bachata).

Thence west, var. 11 30 east,

along the south boundary line of the San Rafael del Valle private land claim and the north boundary line of the "Rancho of San Pedro."

5020. Intersect the east line of Joseph Hoefler's field at a point S. 4 50 W., 313 feet from the northeast corner of said field.

6875. To the south centre of the San Rafael del Valle private land claim on the east bank of the San Pedro River.

Thence west (on the same line), var. 11 30 east,

60 feet, to the west bank of the San Pedro River.

1060. Intersect the west line of Joseph Hoefler's field at a point S. 1 15 E., 137 feet from the northwest corner of said field.

6875. To the southwest corner of the San Rafael del Valle private land claim.

Thence north 12 50 W., var. 11 30 east,

along the west boundary line of the San Rafael del Valle private land claim.

32550. Intersect the south line of Frank Valenzuela's field at a point N. 62 30 E., 729 feet from the S. W. corner of said field.

33680. Intersect the north line of Frank Valenzuela's field at a point N. 67 00 E., 490 feet from the N. W. corner of said field.

66250. To the northwest corner of the San Rafael del Valle private land claim, a monument of stone.

Thence N. 81 00 E., var. 11 30 east.

along the north boundary line of the claim.

6600. To the north centre monument of claim, the post on the limy hill marked S. R. G. No. 8, the place of beginning of the survey of the exterior boundaries of the claim.

GEORGE J. ROSKRUGE, *Surveyor.*

TUCSON, ARIZONA, *August 1st, 1891.*

199 (Endorsement:) Filed in the office of the clerk, Court of Private Land Claims, Mar. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

Plano del Rancho de San Pedro.

(Here follows map marked page 199ª.)

Defendant's Ex. A 2.

I, Nicolas Maria Gaxiola, treasurer-general of the State of the West, certify that at the session of the board of sales held in this office of the treasury on the 18th of the present month there were sold four sitios of land for breeding cattle and horses, surveyed by the constitutional alcalde of the presidio of Santa Cruz, Pablo Fraijo, at the place called San Juan de las Boquillas y Nogales, situate in the jurisdiction of said presidio, in favor of Citizen Captain Ignacio Elias Gonzalez and Nepomucino Felix, residents of Arizpe, whose agent, Tiburcio Gomez, paid into this treasury two hundred and forty dollars, at which said four sitios were appraised as appears from the entry of the 21st of the present month.

And inasmuch as the correspo'ding title can not now be issued until the honorable Congress determines the question propounded by the supreme government of the State in regard to the issue of these documents, I give the present, which in the meantime will secure their property, and authenticate and sign the same with attending witnesses in the absence of a notary, in the capital at Alamos, on the 25th of April, 1828.

Nicolas Maria Gaxiola.

Witness:
Justo Nunez.
Witness:
Jose Aguirre.

Government Exhibit A 2. Extract from Boquillas expediente, showing endorsement made by the treasurer-general in 1828. Filed in the office of the clerk Court of Private Land Claims March 29, 1894. Jas. H. Reeder, clerk. R. L. Long, deputy.

Government Exhibit "B."

Extract from Emory's report.

Mr. Emory stated his entire satisfaction with what had been done by Mr. Salazar and gave his assent thereto except with regard to the monument at San Pedro River. He desired to call in Mr. Weyss, who was with Mr. Von Hippel when the monument was erected on the San Pedro. His own recollection was that a very substantial monument had been erected at the San Pedro by the United States commission.

200 Mr. Weyss was brought before the commissioners and stated that a monument of dressed stone, with the usual inscription, was erected on the parallel 31° 20′, three thousand eight hundred and twenty-five feet west of the San Pedro River. The maps and views were exhibited, showing the exact locality of this monument. Mr. Emory stated if the Indians had destroyed that monument it was all very well; but if it was still standing there might be some discrepancy, amounting, possibly, to 1″ of arc, or one hundred feet between the latitude of the monument erected by Mr. Salazar and that erected under his orders. If so, it might hereafter, when the country was settled, produce confusion.

Mr. Salazar stated that in case both existed he would take the monument erected by Mr. Von Hippel as the true boundary. Assented to by Major Emory.

(Report on the United States and Mexican Boundary Survey, by William H. Emory, vol. 1, page 37.)

Filed in the office of the clerk Court of Private Land Claims, Mar. 29, 1894.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

(Endorsed:) Case # 3. Extract from Emory's report. Dep. (F. 50.) Filed in the office of the clerk Court of Private Land Claims, 29 Mar., 1894. Jas. H. Reeder, clerk, by , deputy.

After argument of this cause by counsel for the respective parties said cause was submitted to the court for decision, and was by the court taken under advisement.

And thereafter, to wit, on the 30th day of March, A. D. 1894, the court gave judgment as follows:

This cause having been submitted to and taken under advisement by the court on March 29th, 1894, the court, after due deliberation, hereby orders, adjudges, and decrees that the claim to the lands described in the plaintiff"s petition on file herein is invalid, and said claim is hereby rejected and the petition is dismissed.

And be it further remembered that thereafter, to wit, , a petition for an order allowing an appeal to the Supreme Court of the United States from the above judgment, an order allowing same, and a citation were filed, allowed, and served, which petition, order, and citation are as follows, to wit:

In the United States Court of Private Land Claims.

JUAN PEDRO CAMOU, PLAINTIFF AND appellant, *vs.* THE UNITED STATES, DEFENDANT AND respondent.	Case No. 3. San Rafael del Valle grant.

The above-named plaintiff, Juan Pedro Camou, conceiving himself aggrieved by the order and judgment entered on March 30, 1894,
201 in the above-entitled cause, doth hereby appeal from said order and judgment to the Supreme Court of the United States, and he prays that this, his appeal, may be allowed, returnable sixty days from the date thereof, and that a transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the Supreme Court of the United States.

ROCHESTER FORD,
Attorney for Plaintiff and Appellant.

TUCSON, ARIZONA TERRITORY, *August 16, 1894.*

And now, to wit, on August 22d, 1894, it is ordered that the appeal be allowed as prayed for.

JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

(Endorsed:) Filed in the office of the clerk Court of Private Land Claims August 29, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Endorsed:) Case No. 3. (File No. 52.) Court of Private Land Claims. San Rafael del Valle grant. Juan Pedro Camou, plaintiff and appellant, *vs.* The United States, defendant and respondent. Allowance of appeal. Filed in the office of the clerk Court of Private Land Claims August 29, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy. Rochester Ford, att'y for appellant.

Copy.

In the United States Court of Private Land Claims.

JUAN PEDRO CAMOU, PLAINTIFF AND appellant, *vs.* THE UNITED STATES, DEFENDANT AND respondent.	Case No. 3. San Rafael del Valle Grant.

UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, district of Arizona, wherein Juan Pedro Camou is appellant and The United States of America are respondent', to show cause, if any there be, why the judgment rendered against the said appellant in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 22d day of August, A. D. 1894.

Chief Justice Court of Private Land Claims.

202 Due and legal service of the foregoing citation is hereby acknowledged this 27th day of August, A. D. 1894.

MATT. G. REYNOLDS,
United States Attorney, Court of Private Land Claims.

(Endorsed:) Filed in the office of the clerk Court of Private Land Claims August 29, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Endorsed:) Case No. 3. (Copy.) (File No. 53.) Court of Private Land Claims. San Rafael del Valle grant. Juan Pedro Camou, plaintiff and appellant, *vs.* The United States, defendant and respondent. Citation. Filed in the office of the clerk Court of Private Land Claims Aug. 29, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy. Rochester Ford, att'y for appellant.

Certificate of Clerk.

UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing is a full, true, and correct transcript of

the record, proceedings, papers, and judgment in the cause entitled Juan Pedro Camou against The United States, No. 3 (San Rafael del Valle private land claim), as the same appear in the records of my office.

I further certify that no opinion has been filed in this case.

Given under my hand and the seal of said court, at Tucson, Arizona Territory, this second day of October, A. D. 1894.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk.*
By R. L. LONG, *Deputy Clerk.*

Certificate of Clerk.

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the annexed document is a full, true, and correct copy of the opinion of the court in the case entitled Juan Pedro Camou *vs.* The United States, No. 3 (San Rafael del Valle grant), as the same appears on file in my office.

Given under my hand and the seal of said court this 23d day of March, A. D. 1895.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk.*
By R. L. LONG, *Dep. Clerk.*

203 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims.

JUAN PEDRO CAMOU, CLAIMING THE "SAN Rafael del Valle grant," plaintiff,
vs.
THE UNITED STATES, DEFENDANT.
No. 3.

Opinion of the court, delivered by Associate Justice Fuller.

It appears by the titles papers that on the 12th day of March, 1827, Rafael Elias petitioned the treasurer-general of the State of Sonora, he being in need of land for live stock, to grant to him the lands he denounced, to wit, the public lands adjoining the ranch of San Pedro, in the jurisdiction of the city of Santa Cruz.

On July 1st, 1827, the treasurer-general of said State, Nicholas Maria Gajiola, instructed the justice of the peace of the city of Santa Cruz to proceed to the survey and appraisement and publication for thirty consecutive days of all the lands sought to be denounced and to cite the coterminous proprietors.

On the 20th day of August, 1827, the survey was completed and signed. He then proceeded to the appr'isement of the land, which was appraised at the price of $240.00, at the rate of $60.00 per each sitio, because that had running water.

These were published from August 30th, 1827, to September 28th of the same year, and transmitted to the general treasurer of Sonora, and

they were, on the 7th day of September, 1828, forwarded to the attorney-general for the treasury of Sonora for his opinion, which was given on the 9th day of February, stating, substantially, that although irregularities existed, yet, if there was no prejudice to third parties, the informalities might be overlooked; the same having been agreed to on the 16th of April, 1828.

Three offers of sale were made, on the 16th, 17th, and 18th days of April, 1828, called for bidders, and no one appeared to bid against Elias, the same was struck off and sold to him for the price and sum of $240.00, the appraisement.

Then follows the endorsement of the receipt of the money. This seems to have been all that was done at that time.

It appears from the copy introduced in evidence that on the 27th day of December, 1832, over three and a half years after the payment of the money, an application seems to have been made to Jose Maria Mendoza, treasurer-general of Sonora, and he seems to have issued the title. Although the United States of Mexico questioned the authority of Mendoza to complete a title of this kind, and although the treasurer-general, Gajiola, who seems to have been the party granting the original petition and receiving the money, yet he did not issue the title. The reason for this is not explained.

204 This grant was not made by the order or authority of the Supreme Government, nor was the consent of the Supreme Government ever given thereto.

By act of Congress approved March 3rd, 1891, this court is directed to settle and determine the validity of titles according to the law of nations, the treaties between the United States and Mexico, and the laws and ordinances of the Government of Mexico.

The question for our determination in this case is, Did the State of Sonora have the power, under the laws of the Government of Mexico, to make a grant of the land in controversy?

These lands lie altogether in the Territory of Arizona (within the boundaries of the former Mexican State of Sonora) and were purchased by the United States from Mexico by the treaty known as the Gadsden treaty or purchase, concluded December 30th, 1853, and ratified June 30th, 1854.

Shortly after, Mexico, by successive revolutions, became independent of Spain some of the State' formed under the constitution first adopted claimed that *the* by the provision of the act of Congress of A'gust 4th, 1824, the States had the right to dispose of the vacant and unappropriated lands lying and being within their own borders (with certain exceptions); notably were such claims made by the States of Coahuila and Texas and of Sonora and Sinoloa; and it is also true that the General Government did not admit such claims, but, on the contrary, claimed and exercised authority to alone dispose of said land as public domain.

This controversy between some of the States and the General Government went on for many years, and the acts of Congress on this subject are numerous and sometimes apparently conflicting, but, according to the opinion of the court of the law which governs this case, it is needless to pursue that subject further; it is sufficient to say, as we have, that such controversy existed and was vigorously maintained by both parties.

Under the constitution of 1836 the States were abolished and Sonora became a department, subject in all respects to the jurisdiction of the National Government, both of its officer' and its rights. It no longer had any legal entity as a sovereign State.

On the 28th of September, 1841, this constitution was abrogated by revolution, headed by Santa Ana, and in its stead a centralized and dictatorial form of government wa sestablished, under the plan of Tacubaya, wherein the chief executive possessed the supreme power of the Government.

In 1846 this Government was superceded and the constitution of 1824 practically reestablished. This continued *under* 1847, when another revolution was precipitated and successfully carried out under the plan of Jalisco, and under which plan Santa Ana, at the time of the Gadsden treaty, was the supreme executive, exercising supreme authority by virtue of said plan and by virtue of the fact that the constitution of 1824, reestablished in 1846, had been abrogated and another constitution was in process of formation under Santa Ana's Government. Under this plan he had supreme power.

Pending the negotiations by Mr. Gadsden a law of decree was promulgated by Santa Ana, as the lawful and supreme head of the
205 Government, declaring the status of the public lands of the country; that was the decree of November 25th, 1853.

Hall's Mexican Law, page 166.

All laws promulgated by Santa Ana during this regime were repealed by the succeeding Government in 1854, but immediately afte*f* the repeal, under the direction of Alvarez, his successor, this law o*r* November 25th, 1853, was specially declared to be in force, and that it should remain in force (decree of President Alvarez, December 3rd, 1855); so that the Government *for* which we purchased decided the question and the succeeding Government gave the same decision, and this last decree was left in full force by the decree of President Comonfort of October 16th, 1856.

Hall's Mexican Law, page 169.

So that, although Santa Ana may have been dictator, yet the status of the public lands had been declared by the supreme power of the Government pending the treaty, and the Government that succeeded him also declared the status of the public lands to be the same. The treaty was concluded on December 30th, 1853, and ratified June 30th, 1854. Therefore, before the treaty was signed and pending the negotiations, the sovereign and treaty-making power declared by law the title to all the vacant lands to belong to the nation, and declared that the States never had any authority or right to sell o*f* otherwise dispose of the same. This declaration forms a part of the contract of the sale to another sovereignty.

The treaty-making power, just prior to the purchase, having construed and passed upon the right of the States to the public lands, and having declared that their claims theretofore asserted were without merit and void, we are bound to accept the construction of their own laws and the laws existing thereunder by the Government from which we obtained the property.

No principle is better established than where one State or Government is called upon to construe the laws of another State or country they will accept the construction of the latter.

Therefore the decree of Santa Ana of November 25th, 1853, and the decree declaring it to be the law again in 1854, is conclusive upon the rights of parties claiming under State grants, and especially is this true when the courts had no jurisdiction over such matters, but the construction of the same was left to the political branch of the Government.

One sovereignty making a treaty will never go back of the decl'rations of the other sovereignty and the party to the treaty to determine the relative status of the subdivisions thereof to the national Government, nor whether by such treaty and declaration it has dammified any of its citizens. That is a matter to be settled among themselves.

Wheaton's International Law, sections 31 and 32.

"The sovereign or ruler of the State is considered in international law as representing in his persons its sovereign dignity. It matters
206 not whether he is a monarch or president—whether he is de facto or de jure head of the nation (if he has been duly recognized as such)—custom has invested his person with certain international rights as representative of his State."

Halleck's International Law, page 62.

"A composit' State or supreme federal government results from a grant of supreme federal powers to the government of the union, with the consequent limitations imposed upon the separate governments of the several compact States. Each seperate State may retain its own legislature and its distinct laws and administration, and its seperate sovereignty may still subsist internally in respect to its coordinate States and in respect to the supreme federal government in questions of power not expressly granted to it, but in all external relations its sovereignty is completely merged and destroyed."

Halleck's International Law, page 47.

Attorney-General Black, in an opinion delivered to the President on November 9th, 1859, said, in speaking of the rights of claimants to lands, as follows:

"The Mexican claimant was bound by the affirmations made by his Government, and should look *it* it and not *the* the United States for redress for the injury, if any, which was inflicted."

And, indeed, we find that in October, 1856, the Mexican Government, in recognition of this principle of international law, made provisions for persons who had been damaged by the decree of President Santa Ana by declaring that "Antonio Lopez de Santa Ana *had* his ministers who took part in this approval and promulgations are responsible with their property, and the governors of the departments are likewise responsible with *this* property, for the damages they have caused in the execution of the provisions over public lands, having exceeded their limits laid down un' the several laws."

Compiled Laws, Vol. VIII, page 269, No. 4811.

So we conclude the Mexican Government, having declared through the treaty-making power, pending the negotiations of this treaty in form of a law, that the State of Sonora never owned the public lands and never had any right to dispose of them, the United States received it with this declaration and is relieved of the responsibility of inquiring into the

relative status of the State of Sonora and the national Government, or as to whether the national Government has violated any of its obligations to one of its subdivisions created by itself.

The Bobocomri grant is of the same date and made by the same officials as the San Rafael del Valle grant, and is disposed of in the same way.

There is this difference, however, in the two cases: It was shown on the trial of this latter case that it was void for uncertainty in the description of the property; that the boundaries were such that no grant could be located.

207 Translations of the decrees of President Santa Ana, the decree of President Alvarez, and the decree of President Comonfort will be attached to this opinion as part thereof.

The grant in this case is void and the claim under it is rejected. A decree may be drawn accordingly.

THOMAS C. FULLER,
Associate Justice, for the Court.

SEPT. 5, 1894.

Annuls sales of lands made by the States, etc.; Antonio Lopez de Santa Ana, etc.

Art. 1. It is declared the public lands (terrenos) as the exclusive property of the nation never could have been alienated, under any title, by virtue of decrees, orders, and enactments of the legislatures, governments, or local authorities of the States and Territories of the Republic.

2. Consequently, it is also declared that the sales, cessions, or any other class of alienations of said public lands (terrenos) that have been made without the express order and approval of the general powers, in the manner prescribed by the laws, are null and of no value or effect.

3. The officials, authorities, and employees upon whom devolve the execution of this decree shall proceed as soon as they receive it to recover and take possession, in the name of the nation, of the lands comprehended in the provisions of article 1, and that may be in the possession of corporations or private individuals, whatever may be their prerogatives or position.

4. The judicial, civil, or administrative authorities shall admit no claims of any kind nor petitions whose purpose is to obtain indemnifications from the public treasury for the damages the unlawful holders or owners may allege under the provisions of the preceding article; and they shall preserve their right only against the persons from whom they have the lands (terrenos) they are now compelled to return.

(Decree of November 25th, 1853. C. L., vol. , p. 776, No. 4118.)

Annuls sales of lands made by the States, departments, etc.; Antonio Lopez de Santa Ana, etc.

Art. 1. The titles of all the alienations of public lands (terrenos) made in the territor' of the Republic from September, 1821, till date, whether by the general authorities or by those of the extinguished States and departments, shall be submitted to the revisions of the Supreme Government, without which they shall have no value and shall constitute no right of property.

* * * * * * *

5. The alienations of public lands (terrenos), of whatever nature they may be, that have been made by the authorities and officials of the departments without the knowledge or approval of the General Government during the epoch when the central system was in force in the Republic are void.

208 6. Those made by said authorities in the epoch of the extinguished federation are likewise void, provided they were not made for the purpose of extending and promoting colonization, which was the purpose proposed by the law of August 18th, 1824.

7. Grants or sales of land (terrenos) made to private individuals, companies, or corporations under the express condition of colonizing them, and the holders of which have not complied therewith in the terms stipulated, are declared to be of no value.

8. The alienations made by the States or departments and declared void by the three preceding articles may, nevertheless, subsist if the holders of the land (terrenos) obtain the consent of the Supreme Government and pay into the public treasury what it considers proper to exact as the value of the lands (terrenos), provided they apply for the irratification within the term designated in article 2, in which case alone there shall be no further proceedings to annoy or jeopardize them.

* * * * * * *

14. The law of November 25th of last year remains in force in so far as it is not in conflict with the present decree.

(Decree of July 7th, 1854. C. L., vol. , p. 228, No. 4276.)

Repeals Santa Ana decrees; Juan Alvarez, president ad interim, etc.

"Art. 1. The decrees of November 25th, 1853, and July 7th, 1854, which submitted to the revision and approval of the Supreme Government the grants or alienations of public lands (terrenos) made by the local governments of the States or departments and Territories of the Republic from September, 1821, to that date are repealed in all their parts.

2. Consequently all the titles issued during that period by the superior authorities of the States and Territories under the federal system by virtue of their lawful faculties or by those of the departments or Territories under the central system, with express authorization or consent of the Supreme Government for the acquisition of said lands (terrenos), all in conformity with the existing laws for the grant or alienation, respectively, shall for all time be good and valid as well as those of any other property lawfully acquired, and in no case can they be subjected to new revision or ratification on the part of the Government.

3. The alienation of public lands (terrenos) that have been made by the authorities of the States or departments and Territories without the requisites referred to in the preceding article, and in contravention of the provisions of article 4 of the law enacted by the General Congress on the 18th of August, 1824, are void and of no value, and the holders of that class of lands (terrenos) are subject to the penalties established by the existing laws of the Republic for thos' who acquire property in an unlawful and fraudulent manner, unless they promptly obtain the approval of the Supreme Government, to which they should apply therefor through the department of public works.

209 4. All titles of acquisition of public lands (terrenos) which under the law of July 7th, 1854, have been presented to the

department of public works for their ratification under the provisions of articles 5 to 8 of said law, shall be returned to their respective owners without requiring payment of any kind of them.

With regard to those in the case stated in article 3, proceedings shall be taken in the manner provided for in the same.

5. The grants or sales of public lands (terrenos) made by competent authority and under the laws in force in their case with the express obligation on the part of the new holders to colonize them in a given time without their having complied therewith in the manner stipulated, are for that reason alone void and of no value, and said lands (terrenos) shall again become the property of the nation."

(Decree of December 3rd, 1855, C. L., Vol. VII, p. 627, No. 4588.)

Nullifies certain decrees of Santa Ana; Ignacio Comonfort, substitute president, etc.

"ART. 1. The decrees of November 25th, 1853, and July 7th, 1854, are void.

2. Antonio Lopez de Santa Ana and the ministers who took part in their approval and promulgation are responsible with their property for the damages they have caused.

3. The governors of the departments are likewise responsible with their property for the damages they have caused in the execution of the provisions on public lands (terrenos), having exceeded the limits laid down in the several laws."

(Compiled Laws, Vol. VIII, p. 269, No. 4811.)

(Endorsed:) No. 3. In the Court of Private Land Claims. Juan Pedro Camou vs. The United States. Opinion of the court by Asso. Justice Fuller. Filed in the office of the clerk Court of Private Land Claims, March 23rd, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Endorsed:) Case No. 15718. Supreme Court U. S., October term, 1894. Term No., 834. Juan Pedro Camou, app't, vs. The United States. Certified copy of opinion of Court of Private Land Claims. Filed Mar. 28, 1895.

Supreme Court of the United States.

JUAN PEDRO CAMOU, APPELLANT,
vs.
THE UNITED STATES, APPELLEE.

It is hereby consented and stipulated that there may be omitted from the printed record of the above cause on appeal the twelve photographs, printed in blue, marked Exhibits 9 to 20 and 22, which were received in evidence upon the trial of said cause, and that this
210 stipulation may be filed in the above court as authority for the clerk of said court in the premises.

Dated Tucson, Arizona, March 18, 1895.

ROCHESTER FORD,
Attorney for Juan P. Camou, Appellant.

MATT. G. REYNOLDS,
Attorney for the United States.

HOLMES CONRAD,
Solicitor-General.

(Endorsed:) Case No., 15718. Supreme Court U. S., October term, 1894. Term No., 834. Juan Pedro Camou, appellant, vs. The United States. Stipulation to omit parts of record in printing. Filed April 3, 1895.

(Endorsed on cover:) Case No. 15718. Court of Private Land Claims. Term No., 834. Juan Pedro Camou, appellant, vs. The United States. Filed October 29, 1894.

211 In the Court of Private Land Claims, Arizona district, 1895.

JUAN PEDRO CAMOU
vs.
THE UNITED STATES. } No. 3. San Rafael del Valle grant.

Dissenting opinion.

Not being able to agree with the majority of the court in its conclusion in this case, and the questions involved being of importance as well as of interest, I have felt justified in recording my dissent from the conclusion of the majority of the court in the case.

The first question presented is, Did the State of Sonora at the time of the making the grant in this case have authority to make it as it was made?

On August 4th, 1824, the Federal Congress of Mexico passed a law generally known as the law for the classification of the revenues. This law somewhat minutely specified the revenues which thereafter should belong to the natives. These specifications are contained in the first nine articles. The 9th article is the only one providing for the revenue arising from land. This section in the original reads: "9. Has bienes nacionales, en los que se comprehenden los de la inquisicion y temporalidades y cualesquiera otros fincas rusticus y urbanus que pertenecen o' que pertenecieren en lo de adelante hacienda publica." This section is ordinarily translated: "9. National property, in which is included those from the inquisition and temporalities of the clergy or any other rural or urban property which belongs or shall hereafter belong to the public exchequer."

By an examination of the original Spanish it will be observed that the Spanish word which has been translated "property" in the expression "national property" is bienes, and that the Spanish word which has been translated "property" in the expression "any other rural or urban property" is fincas.

It will be conceded by any person familiar with the Spanish that neither of these words is ordinarily used to express the idea of vacant public lands or public domain. Bienes is a word ordinarily used to convey the idea of property in its general sense, which has been reduced to actual use, and may consist either of chattels or realty, but is never used to mean distinctively vacant public land, nor in that sense; so that if we meet with this word in a law or any kind of document or speech we would not be authorized to regard it as referring to the public domain unless from the context it affirmatively appears to have been used in that sense.

The word fincas signifies property; not property in a general sense, but a particular class of property, usually real property, which has at some time been reduced to private ownership and capable of producing a revenue by its use or leasing. It seems to me reasonable to say that both these words were used in the section under consideration in the same sense and in the sense in which they were used in ordinary speech, which would exclude the idea of public domain. Article II provided that the revenues not comprehended in the preceding articles should belong to the States.

In my opinion, therefore, *the revenues to be derived from the* disposal of the public domain within the States were intended to belong to the States respectively. This contention is strengthened by the following considerations:

The term "national property" in the article referred to is followed by a specification of the classes of property intended to be included.

The universal rule of construction is that where general words in a statute are either preceded or followed by particular words the general words will be construed to refer to the particular class or classes named in the particular words and their meaning limited accordingly.

212 Construing article 9 by this rule, it follows that the only revenues from real property reserved to the federation therein was that from the inquisition and temporalities, which, as we well know, were improved properties, and any other town or country property capable of producing a revenue by being used or leased.

The proceeding of the collection and disbursement of revenue is essentially an executive function, but under a republican constitutional form of government like that of Mexico the executive department could have no authority to collect revenue or dispose of the public domain for that purpose except such as was conferred by a law of the National Congress. We may therefore naturally suppose that if it had been the purpose of the Congress to reserve to the nation the revenues from the disposal of the public domain there would have been provision made to carry such purpose into practical operation by authorizing the executive department to dispose of it or by making it subject to the operations of the national treasury. Now, the only provision found in the law of August 4th, 1824, authorizing the disposal of real property belonging to the nation is article 10, which reads as translated: "The buildings, offices, and the lands attached thereto which belong or have belonged to the general revenues and those which have been mentioned by two or more of what were formerly provinces are at the disposal of the Government of the federation." It will be observed that the class of real property described in this article and which the Government was authorized to dispose of was of the exact same class which I have endeavored to show was reserved to the revenues of the federation in article 9. The significance of this provision is seen when considered in connection with the provisions of the law of August 18th, 1824, commonly known as the colonization law. It has never been questioned that the subject-matter of legislation of the latter law was the vacant public lands.

Article 3 provided that the Congress of the States should provide for the colonization of the land within their respective limits, subject only to certain restrictions specified in the law itself.

Article 15 provided that the Government should proceed to the colonization of the territories, subject to the same restrictions. The two sections taken together show conclusively that the States never empowered, by a system of colonization to be formulated by themselves, subject to the restrictions specified, to dispose of all the public domain within their respective limits, and that the executive department of the Government was authorized by a system of colonization to be formulated by it, subject to the same restrictions, to dispose of the public domain within the limits of the territories and within the territories only.

On September 21st, 1824, a law was enacted providing for the collections and disbursement of the revenues of the federation. It authorized the executive to appoint in each State a commissary-general of the different branches of the federal exchequer. Article 4 provided that this commissary should collect and disburse the proceeds from the revenues and the contingents of the States. Article 5 specified the revenues
213 which he was authorized to collect, and, among the others, specified the revenues from the same class of lands which I have endeavored to show were reserved to the federation by the law of August 4th, 1824, and did not include any specification applicable to the public domain. It authorized this commissary to collect the "contingents of the States." These contingents were certain sums of money which were to be paid by the States to the federation as provided for in the law of August 4th, 1824. They were provided for as part of the same law with and are to be considered in the light of the provision granting to the States the revenue from the public domain, and it seems reasonable to conclude that the one was the consideration for the other. When we consider these three laws together, and the fact that they were enacted by the same Congress and within a few days of each other, they appear to be parts of a comprehensive and harmonious system for the colonization and disposal of the public lands and of providing a revenue as an incident thereto, which system was that the vacant lands within the States should be disposed of and the revenue therefrom collected under the direction of the States respectively, in consideration of which the States were to pay to the federation the sums provided for in lieu of the revenue which the federation might obtain by the disposal of the vacant lands under its own direction for its own benefit; but whether my supposition as to the consideration for these contingents is correct or not, it seems to me incontrover'ible that by this legislation the States were fully empowered to convey a good title to any or all the vacant public land within their limits.

In this connection it should be said that it is immaterial whether the legal title to these lands passed from the federation to the State. The federation could retain the fee and at the same time authorize the State to convey a good title, and this is my opinion as to what was in fact done.

Conceding to the States the right to the revenue or proceeds of the sales of the public lands by implication canceled all the power necessary or appropriate to make the right effectual, and as revenue could only be obtained by sales of the land, the power to make such sales passed with and as an incident of the right to obtain the revenue.

On April 6th, 1830, the congress of the federation enacted a law, in article 3 of which it was provided: "The Government shall have power to appoint one or more commissioners to visit the colonies of the frontier

States to contract with their legislatures for the purchase in the name of the federation of the lands they may consider suitable and sufficient for the establishment of colonies of Mexicans and of other nations."

And by article 4 it was provided: "The executive shall have the power to take the lands he may consider suitable for fortifications and arsenals and for new colonies, and shall give the States credit for their value on the account they owe the federation."

These provisions have reference to vacant public lands, and show that the federation recognized the fact that the States had a pecuniary interest in the lands of the public domain, and that these lands
214 could not be taken from the States without their consent and the allowance of their value therefor.

In all these Mexican statutes, it should be understood, the word "government" is used to denote the executive department, and the words government and executive are interchangeable.

On January 26th, 1831, a law was enacted by the congress of the federation establishing a general department of the revenue, under whose control should be all branches of the exchequer administered for the federation except the mail and the mint.

Article 13 provided: "The proceeds from national property (bienes nacionales) shall be collected by commissaries under the immediate direction of the general department."

On July 7th, 1831, there were issued regulations for carrying into effect the provisions of the foregoing law of January 26th, 1831. It divided the operations of the treasury into three branches and specified the particular revenues to be collected by each. In the first branch was placed "national property (bienes), in which is included, under article 9 of the law of August 4th, 1824, that of the inquisition and temporalities and all other country or town property (fuicas) belonging to the federation." There is no other provision or regulation for revenue from any other class of real estate, thus showing that proceeds derived from the vacant public domain did not pertain to the revenue of the federation.

On May 20th, 1825, the State of Sonora enacted a law for the colonization and disposition of the vacant public lands within its limits. It provided for raising revenue by means of the disposal by sale of the public lands, and further provided that no one could obtain any part of these public lands who did not show that he required the land for his actual use and occupancy. The constitution of the federation required that copies of all laws enacted by the States should be certified to the congress of the federation, which was given power to repeal or nullify any objectionable law so enacted by a State.

We are compelled to indulge the presumption that this requirement of the Federal constitution was complied with, and that the federation had full notice of this law of Sonora. This law was never at any time repealed or nullified by the congress of the federation. These circumstances afford the most convincing proof of a practical construction given by the federation to its own laws of August 4th and August 18th, 1824, and that such construction was to the effect that the States were empowered to convey title to the public lands. It was during the time when the law of August 4th, 1824, and the law of August 18th, 1824, of the federation, and the law of May 20th, 1825, of the State of Sonora, were in force that the grant of land in question in this case was made.

In the light of the legislation I have recited I can come to no other conclusion than that the grant when made was good and valid. There has been a contention that the law of May 20th, 1825, of Sonora was invalid for the reason that it was not a law for the colonization, but a law for the sale of the public lands.

The next question is as to whether the right of property which
215 the original grantee obtained in the land was taken from him by the decree of Santa An'a issued November, 1853.

This decree was issued by Santa Anna, as President of the Republic of Mexico. It reads:

"ARTICLE I. It is declared that the public lands, as the exclusive property of the nation, never could have been alienated under any title by virtue of decrees and enactments of the legislatures, governments, or local authorities of the States and Territories of the Republic.

"2. Consequently it is declared that the sales, cessions, or any other class of alienations of said public lands that have been made without the express order and approval of the general powers, in the manner prescribed by the laws, are null and of no value or effect."

This decree was not issued under the authority of any law of the Congress of the Republic or of the constitution, but depends for its validity, in so far as it attempts to deprive the grantees of the rights of property vested in them by the sales in question, upon whatever power Santa Anna possessed as President of the Republic.

Santa Anna was President of the Republic. The powers and functions he exercised as such President were delegated powers. The President was the executive of the nation, not its lawmaker nor its judiciary.

In Mexico the lives and property rights of the citizens were as inviolate as they are in the United States. There never was delegated to the executive the power to deprive any citizen of his property. We can not assume that Santa Anna had such power from the bare fact that he undertook to exercise it, but before we act on such an assumption it should be made to plainly and clearly appear.

As is well known, the structure of the Mexican nation was based upon the declarations of principles contained in the plan of Iguala.

By article 12 of that instrument it was declared: "All the inhabitants, without other distinction than their merits and virtues, are citizens, with the right to choose their own locations."

Article 13. "Their persons and property shall be respected and protected."

On October 4, 1824, a permanent constitution of the nation was adopted, in which it was declared: "Article 147. Confiscation of property is forever prohibited. Article 148. Every judgment by special commission and every retractive law is forever prohibited."

This constitution was readopted August 22, 1846.

These show the fundamental principles as to rights of property on which civil government in Mexico was deemed to be based.

Santa Anna was elected chief executive of the Republic in pursuance of what are known as the plan of Guadalajara and plan of Jalisco, finally adopted February 6, 1853.

The first declaration contained in the plan of Guadalajara is, "The Mexican nation is one alone and undivisible, constituted under the popular representative system."

216 This declaration seems to me to exclude the idæa that the chief executive could have other than delegated powers.

Autocratic power is inconsistent with and repugnant to the idea of a popular representative system.

Article 2 of the plan of Jalisco provided "that the executive power which shall be elected in conformity with this agreement until the new political constitution yet to be formed shall be promulgated shall have the necessary faculties for the reestablishment of social order, to organize the public administration, to form the national treasury, and to expedite the functions of the judicial department, introducing into the same necessary reforms without interfering with its independence."

These are the powers delegated. They are all executive in character.

He was not given legislative power, and the very declaration recognizes the existence of a separate judiciary which was to be wholly independent. He was not delegated the power to determine what laws of the nation were or were not constitutional, or what laws of the States should or should not be repealed.

There is not a word or a line indicating that his powers were not limited by the fundamental principles of the rights of property on which the nation was constructed.

I am of the opinion, therefore, that the decree of November 25, 1853, could not and did not have the effect to deprive the grantees of the right of property in the land which was vested by the grant, and that this right of property in the land existed as completely at the time of the taking effect of the treaty of cession as it did prior to the issuance of Santa Anna's decree.

It is supposed that Santa Anna was authorized to determine whether as a matter of law the grants of land made by the States were valid as against the General Government, but no law of the nation can be found conferring upon him any such function. Under the Mexican system the National Congress was the judge of the constitutionality of the laws it enacted. But Santa Anna was only chief executive and not the Congress, and no law is to be found conferring upon him the functions of the Congress in this respect, and, as I have before remarked, his assuming to exercise the power was not of itself sufficient to create the power nor sufficient evidence of the existence of the power.

Therefore his declaration that the law of Sonora under which the grant was made was null was not binding upon the grantees, nor did it have the effect of a judicial determination against them. There can be no such thing as a judicial determination without a hearing, even in much-maligned Mexico.

The next and most serious question in the case arises upon the contention, first, that by the treaty of cession the United States has recognized the authority of Santa Anna to determine the status of all property within the ceded territory at the time of the treaty, and that his determination, being so recognized, is binding.

And, second, that the declaration of Santa Anna that all grants of land made by the State of Sonora were null operated as an in-
217 ducement to the treaty, and therefore became binding in favor of the United States.

A treaty like the one in question has two distinct phases. In the first place, it operates as a contract between the parties to it, and as such is to be construed like contracts between individuals. In the second place, it operates as a law or statute affecting the citizen and binding his person and property in the same manner as any other law.

A treaty affects the property rights of the citizen as a law and because it is a law, and as the supreme law of the land.

As a contract between the two nations, those matters which operated as an inducement to its execution may perhaps be properly considered as entering into it and binding upon the parties as contractors, although not written into its terms.

But as a law affecting his rights of property, the citizen is only affected by what is expressed in the treaty. A citizen's right of property may be taken from him by a treaty as the supreme law of the land, but it is the terms of the treaty and the terms of the treaty alone which has this effect, and not some extrinsic ulterior fact operating upon one of the contracting parties as an inducement to entering into it.

The point I wish to make is, that for the treaty to be held to have recognized Santa Anna as having authority to determine and declare the status of the property ceded, as to being public or private, it must have been expressed in the treaty itself. In order that the declaration of Santa Anna that all grants of land made by the State of Sonora were void be held to be confirmed by virtue of the treaty, a provision to that effect must have been made a part of the treaty itself. How can the citizen know what is made part of a law except what he can see has been actually incorporated into it?

I do not know that this precise question has been directly decided by the Supreme Court, but there are a few cases illustrating to an extent the proposition I am discussing.

It is generally held, and by the Supreme Court of the United States, that a treaty takes effect from its execution, and that ratification relates back to the date of signing.

The case of Haver vs. Yaker (9 Wall., 32), however, holds that this is true only in so far as the treaty operates as a contract, and that in so far as it operates as a law affecting the personal rights of the citizen it takes effect only from the date of ratification. The idea expressed is that a citizen can not be affected in his personal rights by a treaty any further than he can know what it is.

In the case of U. S. vs. Yorba (1 Wall., 412) a question arose on the treaty of Guadalupe Hidalgo. In the negotiation of that treaty a declaration was made on behalf of Mexico that no grants of land had been made in the territories after the 13th day of May, 1846. The United States resisted a confirmation of a claim on a grant made after that date. The court says that, even had the treaty been concluded in reliance upon the truth of the declaration, that fact could not affect the rights of parties who, subsequent to the date specified, obtained grants of land
218 from the governors of California while their authority and jurisdiction continued, and that the rights of the citizens to their property depends upon the authority of the officer to make the grant at the time it was made and not upon the subsequent declaration of a commissioner to negotiate the treaty on the subject.

It is easy to see the reason of the principle announced by the court. The declaration was not made part of the treaty, and did not become a part of the law of the treaty, and therefore not binding as a law upon the citizen as to his private property.

The case of Doe *ex.* Braden, 16 Howard, 635, is an interesting one as illustrating the point in question.

After the negotiation of the treaty between the United States and the King of Spain for the cession of Florida had been begun the King made certain grants to large tracts of land within the limits of the proposed cession.

After the treaty had been signed, but before the ratification, the fact came to the knowledge of the United States. Before the United States would ratify the treaty Mr. Adams, Secretary of State, insisted that a written declaration to the effect that the grants were thereby annulled should be made by the King and attached to and made part of the treaty, which was finally done.

The court held that by reason of the declaration of the King having been attached to and made part of the treaty it became a law binding upon the grantees of the land and as such law had the effect to annul the grants. A careful study of that case, it seems to me, shows that it is a recognized principle that the declarations of one of the contracting parties outside the treaty, although made and operating as an inducement to the treaty, can not affect the private rights of individuals unless they are incorporated with and made part of the treaty itself.

It was not the declaration of the King of Spain which had the effect to annul the Alagon grant, but it was the treaty entered into by the United States Government, and which became the supreme law of the land, that annulled the grant.

The negotiation of the treaty of cession by the United States with Santa Anna was a recognition of his authority to make it and of his authority to cede by means of the treaty all that the Republic of Mexico owned within the ceded territory; but it was not an application of what the nation did own within those limits. It was a recognition of his authority to make all the stipulations and provisions which were contained in the treaty, and if the treaty had contained a clause declaring all grants of land made by Sonora to be void, it would have been a recognition of his authority to insert such a clause, and the treaty with such a clause inserted would have invalidated all such grants; but this would not have been a recognition of the power of Santa Anna to do what he attempted by his decree of November 25, 1853. The effect of the treaty would have in no way depended upon that decree. The grants would have been null because the treaty so declared, and not because Santa Anna had so declared as an inducement to the treaty. In other
219 words, the recognition of Santa Anna as the treaty-making authority was not a recognition of the power of Santa Anna to do what he attempted by his decree of November 25th, 1853. The effect of the treaty would in no way have depended upon that decree. The grants would have been null because the treaty so declared, and not because Santa Anna had so declared as an inducement to the treaty. In other words, the recognition of Santa Anna as the treaty-making authority was not a recognition of the existence of any other power claimed

or exercised by him or of his power to affect the private rights of individuals in any other way than by means of provisions inserted in the treaty itself. The treaty-making authority of the United States is the President and the Senate. Suppose the President should issue a decree to the effect that all patents issued on desert-land entries in Arizona were without lawful authority and void, and that his decree should be ratified by a resolution of the United States Senate, we would all say the proceeding was wholly void and did not deprive the patentees of their property in the land. The fact that the President and the Senate constituted the treaty-making power does not show that they have any other power or can affect private rights in any other way than by means of the express terms of a treaty; but suppose that a month or any other period after making such decree by the President a treaty should be made by the President and ratified by the Senate ceding the State of Arizona to Mexico, in which no mention should be made of the validity or invalidity of desert-land entries, would we say that fact altered the legal effect of the prior decree of the President declaring them void? Certainly not; and yet if the treaty they made contained a clause nullifying all such entries or declaring them to be void we would all say the entries were rendered null, not by reason of the prior decree of the President, but by reason of the clause contained in the treaty. It is certainly true that the treaty-making power of a country has the power to declare the status of all the property it cedes by treaty to another country, but it is equally true that the only way in which such declarations of status can be made to effect private rights is by means of the treaty itself. The declaration must be the declaration of the treaty in order to affect private rights. In the case of the Gadsden treaty there was a specifiation of the class of grants of land within the ceded territory which would not be recognized. If it had been the intention of the United States to confirm by the treaty Santa Anna's decree of confiscation and to nullify all grants of land made by Sonora, that sense of fairness recognized by those of the slightest moral instinct would have required it to say so in manly terms. The treaty contains no hint that State grants are to be regarded as invalid; on the contrary, by its silence on this subject, such grants are permitted to stand upon their own merits as to validity. Santa Anna's decree is left to be tested by his authority to make it. If valid by its own force, then grantees under State grants had no property in the lands granted to be protected by the treaty. If void, then the grantees had a property in the lands granted notwithstanding the decree which is protected by the treaty.

I am of the opinion, therefore, that the grant in this case was valid when made, that it was not affected by Santa Anna's decree, and that the right of property originally vested under it is protected by the treaty, and I am authorized to say that Associate Justice Stone concurs with me in this opinion.

(Signed) HENRY C. SLUSS,
Associate Justice.

(Endorsed:) Case No. 3; file No. —. Juan Pedro Camou, plaintiff, vs. The United States, defendant. Dissenting opinion of Judge Sluss. Filed Apr. 5, 1895. James H. Reeder, clerk, by R. L. Long, deputy. 834. 15718. Ap'l 22, '95.

(Endorsed:) Case No. 15718. Supreme Court, U. S., October term, 1894. Term No., 834. Juan Pedro Camou, app't, vs. The United States. Stipulation and addition to record. Filed May 12, 1895.

220 And be it further remembered that thereafter, to wit, on the 31st day of January, A. D. 1899, the same being the 12th day of the January term, before the Court of Private Land Claims, sitting at Tucson, Arizona, the following proceedings were had:

J. P. CAMOU *vs.* UNITED STATES. } No. 3. San Rafael del Valle grant.

Now comes William Herring, esquire, attorney for the plaintiff in this cause, and presents to the court a certified copy of the mandate of the Supreme Court in the above-entitled cause, whereby it appears that the appeal heretofore taken by said plaintiff from the judgment of this court to the Supreme Court has been considered by said Supreme Court, and the decree heretofore, to wit, on March 30th, 1894, entered by this court was, on May 31st, 1898, by judgment of said Supreme Court, reversed and said cause remanded to this court for further proceedings therein. It is therefore ordered by the court that said mandate be filed as of January 17th, 1899, that being the first day of the January term, 1899; and that the decree of rejection heretofore, to wit, on March 30th, 1894, entered by this court in this cause be, and the same is hereby, vacated, annul'ed, and set aside. It is further ordered that said cause be, and the same is hereby, reinstated on the dockets of this court for further proceedings in accordance with the opinion and decree of the Supreme Court.

(Minutes signed) JOSEPH R. REED,
Chief Justice.

221 And be it further remembered that thereafter, to wit, on the 11th day of February, A. D. 1899, this cause came on for further hearing before the court under the mandate of the Supreme Court.

William Herring and Rochester Ford, esquires, appearing for the plaintiff, and Matthew G. Reynolds, U. S. attorney for the Court of Private Land Claims, and W. H. Pope, esquire, for the United States.

The testimony, both oral and documentary, offered and introduced on said February 11th, 1899, is as follows, to wit:

222 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Arizona district, January term, 1899.

JUAN PEDRO CAMOU, PETITIONER, *vs.* THE UNITED STATES ET AL., DEFENDANTS. } No. . San Rafael del Valle grant.

Transcript of trial.

Appearances: William Herring, esquire, and Rochester Ford, esquire, for the petitioner; Matthew G. Reynolds, esquire, United States attorney for the Court of Private Land Claims, and William H. Pope,

esquire, special assistant to the Attorney-General, for the United States; W. H. Barnes, esquire, for the other defendants.

On Saturday, February 11th, 1899, at ten o'clock a. m., this cause was called up for further proceedings under the mandate of the Supreme Court of the United States, and the following proceedings had therein:

223 The Government moved the court to continue this cause till the next term of court, as it was not yet in possession of certain records and documents from the files of the Mexican Government which it considered essential to its defense, although repeated and diligent efforts had been made for sometime past to obtain the same.

The court, after hearing counsel for the petitioner against the motion, directed that the hearing proceed, as the petitioner was ready for trial and wished to introduce his evidence, and then, if the Government could make such showing as would justify a continuance, it would take the matter under consideration.

The petitioner offered in evidence the following:

Extracts from certain historical works, as disclosed by the memoranda itself, which was marked "Exhibit P 1" for identification. The Government objected to this introduction, for the reason that no copies of this exhibit had been filed with clerk, as required by the rules of the court, that they were merely extracts and not the complete work, and being of an historical character, the court might take judicial notice of the facts set out therein.

Also, a certified copy of the field notes of the San Rafael del Valle preliminary survey by Solon M. Allis, from the office of the surveyor-general of Arizona, which was marked "Exhibit P 2" for identification. The Government objected to this evidence, on the ground that the claim as asserted now was totally different from the claim orig-

224 inally asserted, and therefore these field notes were incompetent to prove anything now, and for the further reason that no copies of the same had been filed with the clerk as required by the rules of the court.

No ruling by the court.

Also, a certified copy of the plat of the preliminary survey of the San Rafael del Valle grant, made by Solon M. Allis, from the files of the surveyor-general's office, which was marked "Exhibit P, 3" for identification. The Government objected to this evidence because no compliance or reason for noncompliance with the rules of the court relative to filing copies of exhibits had been shown.

No ruling by the court.

Also, the deposition of Francisco S. Leon, taken before the surveyor-general at Tucson at the time of the investigation of the grant by that officer, which was marked "Exhibit P 4" for identification.

Mr. Herring then read Exhibit P 4.

The petitioner offered in evidence the deposition of Pascal Cruz, taken before the surveyor-general at Tucson at the time of the investigation of the grant by that officer, which was marked "Exhibit O 5" for identification.

Mr. Herring then read Exhibit P 5.

The Government objected to the introduction of Exhibits P 4 and P 5, because the same were incompetent until the death of the deponents had been established.

Objection sustained.

225 The petitioner signified his ability to establish the death of these deponents, and pending that proof Exhibits P 4 and 5 were received.

GEORGE J. ROSKRUGE, a witness of lawful age, being produced, sworn, and examined on the part of the petitioner, testified as follows:

Direct examination by Mr. HERRING:

Q. You are the surveyor who made the survey and the map of the San Rafael del Valle land grant, which was used upon the trial of this case originally?

A. Yes, sir.

Q. Look at this map now shown you and state what that is.

A. That is a map of the San Rafael del Valle private land claim, Cochise County, Arizona, surveyed by me in June, 1891.

Q. Is it a duplicate copy or blue print?

A. It is a blue print.

Q. It is a correct copy of the survey which was made by you and which was here and is here on file?

A. Yes, sir.

Q. Will you state whether in making this survey you found any stream of running water coursing through this grant?

A. I did.

Q. What was it?

A. The San Pedro River.

Q. Which way does it run?

A. It runs in a northerly direction.

226 Q. Does it exist outside of the grant in that country?

A. Yes, sir.

Q. In what direction?

A. Both northerly and southerly.

Q. State whether in the valley in the neighborhood of this land which is embraced within the map of this grant there were ranges of mountains.

A. There were.

Q. Is there any range to the east?

A. The Mule Mountains are on the east and the Huachuca Mountains on the west.

Q. In making this survey for this map, is it or not true that you made a search for the center monument?

A. I did. I searched for the center monument for between two and three days.

Q. Why did you make this search for a monument in the center?

A. I was following the data supplied me from the surveyor-general's office.

Q. In searching for the monument?

A. Yes, sir.

Q. If it appears from the expediente of this title that no monument is called for in the center of that grant, then you were searching for something not within the calls, were you not?

A. Yes, sir.

Q. I will read to you the proceedings of the survey of the San
227 Rafael del Valle grant from the original papers. [Reads:] "At the place called San Rafael del Valle, on the twenty-first day of the month of August, of the year one thousand eight hundred and twenty-seven, I, the said surveying alcalde, in order to begin the survey of the lands to be taken up by the citizen Rafael Elias, presented a cord, well twisted and stretched, to the above-named officials, and a Castilian vara measure, with which were measured and counted off fifty varas of said cord, and this having been done the extremes of the cord were tied to poles, and, the interested party being present, the survey was begun from a point which was taken as a center, which was at a place where there are some small hills, and taking the direction of the south there were measured and counted two hundred cords, which ended at the limits of the San Pedro ranch, land belonging to Don Jesus Perez, and in his stead the superintendents of the same ranch were present and exhibited the documents, which showed that his surveys extended up to that place, the monument of which standing there was taken as the boundary of the one and the other interested parties; and returning to the center the northern direction was taken, measuring and counting two hundred cords, which ended upon the valley where there is a small rising calcareous knoll, where I ordered to be placed a heap of stones as a monument; and returning to the center, there were measured and counted towards the east fifty cords, which ended upon the valley and fronting the Mule Mountains, where I put a heap of stones as a sign of monument; from which place I returned to the center, from which was counted the measurement on the side of the west, measuring and counting fifty
228 cords, which ended upon the same valley, fronting towards the Huachuca Mountains, where there was put a heap of stones as a sign of monument, with which and one hundred cords that were measured from one and the other extremit'es of the lines running south and north, so as to square the land, placing at each the corresponding monuments, the survey was concluded, resulting therefrom four sitios." In that expediente, Mr. Roskruge, do you find any monument called for as the center monument of the San Rafael del Valle grant?

A. No, sir.

Q. Then, in making a survey of this grant, if you shall have ascertained the position of the small rising calcareous knoll on the north and the north boundary of the San Pedro ranch on the south, can you not fix a point in the center of that grant, from which you can measure it north and south?

A. It can.

Q. Will you state whether this survey of the grant of San Rafael del Valle can be made from a point fixed as the center of the grant?

A. It can.

Q. Will you state whether, upon this blue print which we have before us, you have fixed the center of the grant?

A. I have.

Q. Show it here.

A. That white spot is the center of the grant marked "C."

Q. If you run a line northerly from the center point as now fixed by you upon this grant to the limy hill, have you or not thus run to one of the calls in the expediente?

229 A. Yes, sir; I have.

Q. Describe that limy hill.

A. It is a knoll—calcareous knoll—probably about forty or fifty feet high, rising out of the valley.

Q. State whether you made a search for a similar object in that vicinity.

A. I did.

Q. Is there any there?

A. I did not see anything in the whole country like it.

Q. Is it prominent and pronounced in character?

A. It is.

Q. If you run a line southerly from the point fixed in this grant as the center, as shown upon this map, to what place does that line tie on the south?

A. The south center of the grant, the north center of the San Pedro.

Q. Of what San Pedro?

A. The San Pedro private land claim.

Q. State whether or not, within the survey as now shown upon this map, the San Pedro River courses through the whole extent of this grant.

A. It does.

Q. Where, in connection with the San Pedro River, is the point you have now fixed as the center of the San Rafael del Valle grant?

230 A. It is on the left bank of the San Pedro River, probably two or three hundred feet from it.

Q. If, in making a survey of the valley lands along that valley, you desired to take a center for that survey, where would it ordinarily be placed?

(Objected to by the Government, because the answer called for is purely and simply a matter of opinion.

Objection overruled.)

A. I would take it midway between the north center of the grant and the south center.

Q. And in connection with the river, where would you take it?

A. I would take it near the river, of course.

Q. In looking for the center of the San Rafael del Valle grant when you made this survey, where, in relation to the north boundary of the claim, did you look for that center?

A. Two hundred cordeles up the valley from that limy hill.

Q. You said you were looking for the monument then?

A. Yes, sir.

Q. State what else you were looking for at that point.

A. I was looking for little mountains.

Q. Why were you looking for little mountains?

A. Because it is so stated in the copy of the expediente furnished me, which says the survey was begun from the point fixed as a center, where there were some small mountains.

Q. If that is not correct, and the center monument was near

231 some small hills, will you state whether anywhere in the vicinity of the center, as now fixed by you and placed upon this map, there are any natural objects answering to that call?

A. Yes, sir; to the west there are what I would call rolling hills

formed by the two big washes coming down from the Huachuca Mountains, and the erosion has been caused by the fall or flow of the water and has formed what I take to be little rolling hills.

Q. To the west of that center point as now fixed?

A. Yes, sir.

Q. Will you point out upon this map a position which upon the land embraced in the map would be two hundred cords south from the calcareous or limy hill on the north?

A. A point marked in black ink "D."

Q. About how many cords from that point "D" is the center as fixed by you now?

A. About fifty cordeles.

Q. How far now on this map upon the land embraced within it is the center point now fixed here from the limy hill on the north?

A. 33,604.05 feet.

Q. How far from the ranch of San Pedro is this center point now fixed?

A. The same distance.

Q. And about how far as the center from the side lines as shown upon this?

A. Probably about fifty cordeles.

232 (Said map was thereupon offered in evidence by the petitioner, and was marked "Exhibit P, 6," for identification.

The Government objected to this offer, for the reasons already stated at length as to previous offers.

No ruling by the court.

Counsel for the petitioner then stated that he was about to examine the witness upon a suggestive map, embracing four sitios of land within the lines of survey designated in the foregoing exhibit, which said suggestive map was marked "Exhibit P, 7," for identification, being offered in evidence by the petitioner.

The Government objected to this tender, for the reasons stated at length as to previous offers.

No ruling by the court.)

Q. Will you look at this tracing and state by whom it was made?

A. It was made by myself.

Q. State with what, if anything, the exterior boundaries of this tracing correspond.

A. The exterior boundaries of the survey of the San Rafael del Valle private land claim as laid by me.

Q. How accurately does it correspond with that?

A. It is an exact copy.

Q. What is the course upon this tracing of the easterly boundary line as now shown?

A. South thirteen forty-five east.

Q. Will you state the course of the western boundary line—

233 exterior boundary line?

A. North twelve fifty west.

Q. There is an interior line there; will you state the course of that line?

A. North thirteen forty-five west, the westerly side line.

Q. Will you state now whether the eastern boundary line and the interior line—whether they are parallel throughout their whole extent on the map?

A. They are.

Q. State the course of the boundary line abutting upon the San Pedro ranch.

A. West—due east and west.

Q. There is a first interior line as you go north upon this map; state whether it is or not parallel with the line just described abutting on the San Pedro ranch.

A. It is.

Q. What is the course of that line?

A. Due east and west.

Q. What quantity of land is embraced within these interior boundaries which you have just described?

A. 17,360.78 acres.

Q. How many sitios is that?

A. Four sitios.

Q. Will you state what the quantity of land within the grant as originally surveyed by you was in acres?

234 A. 20,034.62 acres.

Q. What was the excess in that measurement over the 17,360.78?

A. 2,673.84.

Q. If now upon this tracing a line is produced from the southern boundary line adjoining the San Pedro ranch at a distance of 946 feet from the exterior line to the northwest corner of the grant, will it form a triangle?

A. Yes, sir.

Q. What is the area of that triangle?

A. 701.40 acres.

Q. If a line be produced at a distance of 1,590 feet from the northeast corner to the northwest corner, that would also form a triangle?

A. Yes, sir; of 192.99 acres.

Q. And a parallelogram between the base of that triangle and the north line of the interior boundaries will contain how many acres?

A. 1,779.45 acres.

Q. Will you state what the 192.99 and the 1,779.45 and the 701.40 acres will aggregate?

A. 2,673.84 acres.

Q. That is the excess?

A. Yes, sir.

Q. Then what kind of a figure do we have after excluding the 192.99 and the 1,779 and the 701 acres and the fractions?

A. We have a parallelogram.

235 Q. Its sides parallel and equal?

A. Yes, sir.

Q. And joining on the south the San Pedro ranch?

A. Yes, sir.

Q. And shortened in from the limy hill on the north to the acreage described by you?

A. Yes, sir.

Q. In examining you in relation to the little hills which you referred to as being in the neighborhood of this rise which you described, what is the position of the center point now fixed by you in relation to those hills?

A. It is immediately east.

Q. Do you know what a loma is? Do you understand the meaning of that term?

A. I understand that lomas are little hills—little low, rolling hills—that is the way I have it, and I have called those hills. They are low, rolling hills.

Q. What would you call lomas on this map—in relation to what point?

A. I would call these lomas west of the center point as I have now fixed it.

Q. How far to the west are they from that point?

A. Probably 1,000 or 1,500 feet, more or less.

Q. In this suggestive map, which you have testified to, state what river, if any, would course through the length of the land as
236 here laid out in the interior boundaries?

A. The San Pedro River.

Q. As to this blue print, Mr. Roskurge (referring to Exhibit P 6), taking what is now marked by you as the center point upon this blue print, can you locate this grant with reference to the calcareous knoll or limy hill, the north boundary of the San Pedro grant and the San Pedro River, and also the Mule Mountains and Huachuca Mountains, as called for in the calls of the expediente of the San Rafael del Valle grant?

A. Yes, sir.

Q. And have you so located it upon this map?

A. Yes, sir.

Q. And by your actual survey in the field?

A. Yes, sir.

Q. As shown upon the map?

A. Yes, sir.

Cross-examination by Mr. REYNOLDS:

Q. You say you found the line of the San Pedro ranch?

A. Yes, sir.

Q. Taking the line of the San Pedro ranch and running your line north two hundred cords, where would it carry you to on this map?

A. It would bring me to the point marked here "E."

Q. Running from the north center monument, or the limy hill, running south two hundred cords, it would bring you to the point
237 you have marked here as "D."

A. Yes, sir.

Q. What is the distance between points "E" and "D?"

A. 12,208.10 feet.

Q. How many miles?

A. Two miles and 1,648.1 feet.

Q. A little over two miles?

A. Yes, sir; about two miles and a quarter?

Q. What is the width you give this grant?

A. It is 100 cordeles.

Q. You have given the exact measurement on this blue print of 100 cordeles, 50 on each side of the center?

A. No, sir; it is less on the north than 100 cordeles.

Q. Why is that?

A. Because when I came from the center on the limy hill and run each way I stopped when I came to a monument which I believed to be a monument of the grant.

Q. Then the north end of this survey, from the northeast to the northwest corner, is not 100 cordeles?

A. No, sir; it is not.

Q. It calls for 100 cordeles in the expediente, does it not?

A. Yes, sir.

Q. How about the south end line of this survey?

A. That is 100 cordeles.

238 Q. Did you find any monuments down there?

A. No, sir.

Q. Then you ran your line out as called for?

A. Yes, sir.

Q. What is the width of your grant at which you have designated as the center point, marked "C," on this blue print?

A. It is less than 100 cordeles.

Q. Why did you make it less?

A. On account of the end line being less.

Q. Did you undertake to survey the lines from what you located as the center?

A. No, sir; I started the survey from the limy hill.

Q. That was the initial point from which you commenced to make your survey?

A. Yes, sir.

Q. Did you make your survey by triangulation?

A. No, sir; by actual measurement.

Q. Then you arrived at your center point by taking a point midway between your two extreme points—the north line of the San Pedro ranch and the limy hill?

A. Yes, sir; that is the way I arrived at the center point.

Q. You did not first find a center point and then undertake to run your survey out two hundred cordeles each way, north and south, so as to get to the end monuments?

A. No, sir.

239 Q. This survey was made upon the basis of the correctness of the end monuments, irrespective of the center?

A. Yes, sir.

Q. If the survey was alleged to have been made from the center point to these points, and they were arrived at by measurement, and you would do so, you would not arrive at either one of these objects, assuming that this center point is correct?

A. No, sir.

Q. To arrive at the center, you assumed that the north center monument, the limy hill, and the south center, the north line of the San Pedro, were correct, and you then measured back and established your center point from these two subordinate points?

A. Yes sir.

Q. And if they did not bring you back, what is the conclusion necessary?

A. Why, they made a mistake in their measurement.

Q. Or they did not measure it at all?

A. Yes, sir; or they did not measure it at all.

Q. If, in identifying the particular four sitios of land that were bought and sold and advertised upon measurements from a center initial point, you can not find that point upon the ground itself, but have to go to the subordinate points and retrace measurements from them, it would
240 leave a space in this case of over two miles between the ends of those measurements from the subordinate points?

A. Yes, sir.

Q. If you are called upon to locate and identify four sitios of land, the specific four that were bought and sold upon a measurement alleged to have been commenced from an initial point, and you got on the ground and could not find that initial point, but you could find what is called in the field notes the north center and the south center monuments, they being subordinate points that were arrived at by measurement from the initial point, and then you measured back from those subordinate points, retracing the line, you should come back to the initial point, shouldn't you?

A. Yes, sir.

Q. You were not able to do that here?

A. No, sir.

Recess until two o'clock p. m.

Q. When you went down to find the initial point from which this survey is alleged to have been made, you say you spent three or four days going up and down the valley hunting for it?

A. Yes, sir.

Q. How is that valley formed?

A. That valley is formed by wash, I should say, from the Huachuca and Mule mountains.

241 Q. You went all the way from the limy hill clear down to San Pedro?

A. Not looking for the monument; no, sir.

Q. In the course of your examinations and survey?

A. Yes, sir.

Q. Did you go south of the line?

A. I went to the San Pedro ranch.

Q. Did you go south of the international boundary line?

A. Yes, sir.

Q. How far?

A. About six or seven miles.

Q. Where did you go?

A. To the San Pedro custom-house or ranch.

Q. How many people were living there at the time?

A. That I could not tell.

Q. How is that valley formed all the way down the length of this grant?

A. The valley, I should say, on the east side is formed by mesa land

from the Mule Mountains, and the west side pretty near all the way it is formed by mesa land.

Q. Both sides?

A. Except some portions down by Hereford and below there; the Huachuca Mountains come right down to the river, and the mesa line is not so well-defined.

Q. Isn't the whole valley formed by a mesa line and small hills
242 breaking into the valley and forming the valley—rolling hills indiscriminately all along the entire length of that grant on both sides from one end to the other?

A. There is a mesa line on both sides.

Q. And also small hills breaking in and breaking out?

A. I would call them rolling hills in some places, but mostly it is mesa line.

Q. Did you observe with any degree of care the topography of the country?

A. I did.

Q. Then you say it is made of mesa lands and small, rolling hills, as well as mesas, breaking into the valley, by means of which the valley is formed all the way along in irregular shape?

A. Yes, sir.

Q. Do you know where the Palominas ranch is?

A. As I understand it, it is near Hereford, at a place called Ochoaville.

Q. How far from the international boundary line?

A. A mile or a mile and a half north of it.

Q. Is it on the grant as you surveyed it.

A. Not on this grant.

Q. How far is it from the south end?

A. Probably five miles, as near as I can tell.

Q. Is the San Pedro custom-house on the San Pedro River?

A. Yes, sir; on the right bank.

243 Q. When you were down there you had the expediente with you?

A. I had the expediente in my book of this the San Rafael del Valle grant.

Q. Did you have the expediente of the San Pedro?

A. I believe I did, but I would not like to say.

Q. Was the San Pedro at that time a private land claim pending in the surveyor-general's office?

A. Not that I am aware of.

Q. How long were you connected with the surveyor-general's office?

A. Ever since 1874 up to 1880, when I left. I went back again in 1893. I had a position as draftsman, but in a separate room from the surveyor-general and other clerks.

Q. You testified in this case when it was tried before, did you not?

A. Yes, sir; I am the same man.

Q. You produced the map of which this is a copy [referring to Exhibit P. 6.]?

A. Yes, sir.

Q. This survey you are testifying to now is the same one you testified to before and this blue print is a blue print of the same map?

A. Yes, sir.

EDWARD N. FISH, a witness of lawful age, being produced,
244 sworn, and examined on the part of the petitioner, testified as follows:

Direct examination by Mr. HERRING:

Q. Where do you live?
A. Tucson.
Q. How long have you lived there?
A. 33 years.
Q. Were you acquainted with a person at any time by the name of Francisco Leon?
A. Very well.
Q. How long did you know him?
A. I knew him from 1865 to some six or seven years ago.
Q. Is he living or dead?
A. Dead.
Q. How do you know?
A. I went to his funeral.
Q. Did you know Pascal Cruz?
A. Yes, sir.
Q. How long were you acquainted with him?
A. About the same length of time.
Q. What were the years of Cruz when you knew him?
A. He was an old man.
Q. Is he living or dead?
A. Dead; that is, I know of his funeral taking place. I did not attend it.
245 Q. What occupation did Leon have?
A. Farmer.
Q. And Cruz?
A. Farmer.

ADELAIDE HUGHES, a witness of lawful age, being produced, sworn, and examined on the part of the petitioner, testified as follows:

Direct examination by Mr. HERRING:

Q. Where do you live?
A. In Tucson.
Q. Are you married?
A. Yes, sir.
Q. Your husband is Samuel Hughes?
A. Yes, sir.
Q. How long have you resided in Tucson?
A. I was born and raised here.
Q. Did you know Francisco Leon in his lifetime?
A. Yes, sir.
Q. Did you know where he lived?
A. Yes, sir.
Q. How long did you know him?
A. Ever since I was a child; that I can not remember.
Q. Is he living or dead?
A. He is dead.

Q. How do you know it?
246 A. I went to his funeral.
Q. Did you know Pascal Cruz?
A. Yes, sir.
Q. What were his years as a man?
A. He was a very old man when he dies.
Q. Is he living or dead?
A. I went to his funeral.
Q. He is dead?
A. Yes, sir.

The petitioner rested his case.

Hereupon the Government renewed its motion for a continuance in this cause until the following term, and after argument by counsel, the court intimated that it would decide the matter on the following Monday morning.

The court then adjourned until next Monday (February 13th) morning, at ten o'clock a. m.

On Monday, February 13, 1899, at ten o'clock a. m., the following proceedings were had in this cause:

By the COURT: We have considered the application of the Government for a continuance in this case. If there is going to be such a period of time between this term and the next as there was since the last, then there is great force in the appeal made on behalf of the claim-
247 ant that he is an aged man, desires to have this case settled before his death, and is ready and has always been ready to proceed with the trial. It has been four years since we were here before. We do not propose, however, to adjourn at this term, but we will take a recess until early in May. It is suggested by counsel that the evidence which the Government will introduce is incompetent. That is a matter we can not determine now. The Government claims that it will be able to introduce evidence, if granted a continuance, that will show the location of the north boundary of the San Pedro grant, that it is so far in Mexico that a portion or none at all of the land in question would be within this jurisdiction. We can not determine as to the competency of the evidence until we know what it is. The location of that boundary or its alleged location is of the highest importance in the location of this grant. On the whole, we have concluded that it will be no hardship on the claimant and the ends of justice will be subserved by a postponement of this case until our meeting here on the 9th of May, and that order will be made.

To which ruling of the court the petitioner by his counsel duly excepted.

248 I, Vernon Beggs, acting official stenographer of the Court of Private Land Claims, do hereby certify that the above and foregoing constitutes a full, true, and correct transcript of the testimony taken and proceedings had at the trial of this cause at the January, 1899, term of the Court of Private Land Claims, held at Tucson, Arizona, as disclosed by my shorthand notes taken at and during said trial.

VERNON BEGGS,
Acting Official Stenographer of the Court of Private Land Claims.

ST. LOUIS, MO., *March 10, 1899.*

249 PLAINTIFF'S EXHIBIT 1.

United States Court of Private Land Claims.

JUAN P. CAMOU
vs.
UNITED STATES OF AMERICA.

[Introduced in evidence by counsel for petitioner in J. P. Camou vs. U. S.—San Rafael del Valle grant.]

Extracts from "Arizona and Sonora: The geography, history, and resources of the silver region of North America."

Court of Private Land Claims.—Exhibit P. I.—By Sylvester Mowry, of Arizona, late U. S. boundary commissioner.

(Page 17.) "The Gadsden Purchase is attached by act of Congress to the Territory of New Mexico. At the time of the acquisition there was scarcely any population, except a few scattering Mexicans in the Mesilla valley, and at the old town of Tucson, in the centre of the Territory. The Apache Indian, superior in strength to the Mexican, had gradually extirpated every trace of civilization and roamed uninterrupted and unmolested, sole possessor of what was once a thriving and populous Spanish province.

"In the possession of the writer of these notes is a map drawn in 1757, over one hundred years ago, presented by the Society of Jesuits to the King of Spain. The original of this map is now in the archives of the Mexican Government. It was copied, with the notes relating to the Territory and Sonora, Chihuahua and Sinaloa, by Captain C. P. Stone, late of the United States Army. The map bears the inscription,
250 'Carte levee par la Societe des Jesuites dedice au Roi d'Espagne en 1757.' The copy of the map and the accompanying notes are certified as accurate by the officer of the Mexican Government in charge of the archives.

"My information, therefore, upon the early history of this comparatively unknown domain is accurate and reliable. As early as 1687, a Jesuit missionary from the province of Sonora, which, in its southern portion, bore already the impress of Spanish civilization, descended the valley of the Santa Cruz River to the Gila. Passing down the Gila to its mouth, after exploring the country, he retraced his steps, penetrated the country north of the Gila River for some distance and ascended the Salinas or Salt River and other northern branches of the Gila. The exploration of this energetic priest did not stop here. Proceeding east, he explored the valley of the San Pedro and its branches, thence along the Gila to the Mimbres, and probably to the Rio Grande and the Mesilla Valley. Filled with the enthusiasm of his sect, he procured authority from the head of the order in Mexico and established missions and settlements at every available point.

"The reports of the immense mineral wealth of the new country, made by the Jesuits, induced a rapid settlement. There are laid down on the map before me more than forty towns and villages. Many of

these were of considerable size. There were a few north of the Gila and several on the lower Gila, near the Colorado. The Santa Cruz and its tributary valleys teemed with agricultural and mining population. Thousands of enterprising Spaniards cultivated the rich valley of the San Pedro, and scattered settlements flourished at every suitable stream and spring at the foot of the mountains toward the Rio Grande. The notes before me say:

"'All these settlements and missions were founded in fertile valleys and by streams and springs, which produced luxuriant crops of wheat, corn, and beans, and in many parts grapes and other foreign fruits were cultivated.'

"In the western part of the Territory were the missions of St. Pierre, St. Paul, St. Matthias, St. Simond, St. Francisco, Merci, the ranches of Eau Cheri, Eau de la Lune, and others; on the Santa Cruz the
251 *the* missions of San Xavier del Bac, Santiago, San Cayetano, and San Philipe; the towns of Tucson, Tubac, Regis, San Agusta, and many others. San Xavier del Bac is still in existence. It is a mission church of great size and beauty, magnificently ornamented within; forty thousand dollars in solid silver served to adorn the altar. Upon the San Pedro River were the missions of St. Mark, San Salvadore, San Pantaleon, Santa Cruz, and the towns of Quiduria, Rosario, Eugenia, Victoria, and San Fernando, the latter at the mouth, with many more. To the east some small settlements were found on the Valle del Saux, on the Mimbres, at the copper mines north of Mimbres, and to the south the immense grazing and stock-raising establishment of San Bernardino, where since have been raised hundreds of thousands of cattle and horses. The Indians in the vicinity of the mission were reduced first to obedience by the Jesuits, and then to slavery by the Spaniards.

"The notes referred to above contain the names and localities of more than a hundred silver and gold mines, which were worked with great success by the Spaniards. The survey of the Jesuit priest about 1687 was repeated in 1710, with renewed discoveries and consequent accession of population. From this time up to 1757 the conquest and settlement of the country was prosecuted with vigor, both by the Jesuits' Society and the Spanish Government.

"The missions and settlements were repeatedly destroyed by the Apaches, and the priests and settlers massacred or driven off. As often they were reestablished. The Indians, at length thoroughly aroused by the cruelties of the Spaniards, by whom they were deprived of their liberty, forced to labor in the silver mines with inadequate food, and barbarously treated, finally rose, joined with tribes who had never been subdued, and gradually drove out or massacred their oppressors. A superior civilization disappeared before their devastating career, and to-day there is scarcely a trace of it left, except scarcely visible ruins, evidences everywhere of extensive and hastily deserted mining operations, and the tradition of the country. The mission of San Xavier del Bac and the old towns of Tucson and Tubac are the most prominent of the remains."

252 (Page 21.) "The notes above referred to, in the possession of the writer, speak of great farming and grazing establishments scattered over the whole face of the territory between 1610 and 1800,

which produced abundant crops of cereals, fruits, and grapes. These statements are confirmed by the testimony of Major Emory and his report, where he enumerates several of the most extensive; by Grey, Bartlett, Parke, and Colonel Bonneville. Many of the ranches, deserted by the Mexicans on account of the Apache Indians, have upon them large, well-built adobe houses, which must have cost the builders thousands of dollars. Many of these have been occupied under squatter titles by emigrants within the last few years. Of others only the ruins remain, having been destroyed by the depredations of the Indians, or by the heavy rains of succeeding years."

(Page 24.) "The San Pedro River and Valley, two hundred and fifty miles west of the Rio Grande, is par excellence the agricultural district south of the Gila. The valley is wide, very rich soil, and is considerably over one hundred miles in length. Owing to the depredations of the Apaches, no settlements have yet been made in this valley."

(Page 27.) "The Santa Cruz and San Pedro approach each other near the Mexican line; and by way of Santa Cruz—a Mexican town at the head of the valley in Sonora—you can pass from one to the other with ease. The whole region between the Rio Grande and the Santa Cruz is broken with conical-shaped hills and mountains, called by the Mexicans peloncillos. At the foot of these hills are found springs, which afforded water to the immense herds of cattle and horses which once covered the country; and at many of these springs are found the ruins of buildings occupied by the herders. The hills are covered to the top with gamma and other nutritious grasses."

(Page 55.) "The history of Arizona since 1859 has two
253 aspects—one of great and steady improvement, the other of calamity and decline. The first was the natural result of the development of the great natural resources of the Territory; the second of fortuitous circumstances and the shameful abandonment and neglect of the country by the Administration at Washington. The uninterrupted success of the Great Overland Mail brought in its train a constantly increasing immigration. The valleys of the Santa Cruz, Sonoita, San Pedro, and Mimbres were rapidly filling up with farmers, while on the Gila many thousand dollars were expended in taking out acequias and redeeming the rich bottom lands at available points. The Federal Government promised protection, and did, in fact, establish new military posts to protect the infant settlement. These posts, however, were poorly garrisoned. The troops were mostly infantry—almost useless to pursue or punish the Apaches. The small cavalry force in the Territory, although most ably handled by Captain R. S. Ewell, First Dragoons, United States Army (since Major-General Ewell of the Confederate Army), was entirely unable to make a campaign with decisive results against the Indians. In spite of this serious drawback, new mines were opened, capital obtained in the East for their development; the farmers flourished and built permanent improvements, and each year showed a decided advance upon the last.

"The change came suddenly and without warning. The overland mail was withdrawn, then the troops, and the settlements in the valleys above named succumbed almost at once to the attacks of the Apaches. Many lives were lost; property of all description' was abandoned, crops

to an enormous amount were left standing in the fields, never to be gathered. Never was desolation so sudden, so complete. In my late journey from Tucson to Guaymas I passed over one hundred and fifty miles of beautiful country, studded with ranches and farms, where at every step were found comfortable houses, outbuildings, fences, and tilled fields utterly abandoned and tenantless."

Extract from letter of J. R. Bartlett, esq., to Lieutenant Mowry, Delegate to Congress, of date October 31, 1857, which is found on pages 184 and 185 of the above-mentioned work.

254 (Page 84.) "The San Pedro Valley is next reached, and lying some ten or twelve feet below the bottom land, unmarked by trees, the river is not observed until at its very margin. It was here about thirty feet deep and two and a half feet deep. Its depth varies with the rainy and dry seasons. Its valley is from a quartor of a mile to mile in width, and in some places I was told it was still wider. This valley formerly sustained a considerable population, scattered about in haciendas and ranches, and engaged in rearing cattle. I noticed the ruins of haciendas, which for years had been aban'oned, and also saw herds of wild cattle roaming through the mesquit and chapparal of the valley. A few days after we met with a large party of Mexicans, under Don Harian Garcia, engaged in hunting wild cattle in order to obtain a supply of beef for the army, for which beef he had the contract. From him I learned that the valley was much broader farther south, and that thousands of cattle grazed there.

"I am not aware that much of this valley has been under cultivation by artificial irrigation, as we did not meet with the usual traces of irrigating canals, which, when once dug, never disappear entirely. Yet such irrigating may have been employed in parts of the valley that I did not examine.

"A pretty little stream, which I learned from the Mexican hunters referred to, called the Babacanora (Babacomori), entered the San Pedro about twenty-five miles above where we first camped. We also encamped at this stream, near a ruined hacienda, where there were remains of an orchard of fruit trees. The valley of the Babacomori is wide and was covered with luxuriant grass. Indeed, it was a much more attractive and apparently richer spot than the valley of the San Pedro. Its broad flats or bottoms resembled those of the Mohawk River, and it was in these, near the confluent with the latter stream, that the Mexicans were hunting the wild cattle."

Extract from letter of Hon. Joseph Lane to Lieut. Sylvester Mowry, under date of March 21, 1858, Washington. (Id., 193.)

255 "DEAR SIR: In regard to the resources of Arizona, agricultural and otherwise, I have to say that I have traveled over that country in the months of November and December, 1848, by the Rio Mimbres; the old, deserted ranches of San Bernardino and San Pedro to the settlements of Santa Cruz, Tucson, to the Pimo villages. Found the climate mild, grazing good, and many rich, beautiful, fertile valleys, capable of producing corn, wheat, rye, oats, and vegetables sufficient to subsist a large population."

Extracts from "Ex. Doc. No. 41, notes of a military reconnoissance from Fort Leavenworth, in Missouri, to San Diego, in California, including part of the Arkansas, Del Norte, and Gila rivers," by Lieut. Col. W. H. Emory.—Made in 1846–7 with the advance guard of the "Army of the West."

"Report of Lieut. Col. P. St. George Cooke of his march from Santa Fe, New Mexico, to San Diego, Upper California.

(Page 555.) "San Bernardino is a ruined ranche, with buildings enclosed by a wall with regular bastions. It overlooks a wide, flat, and rich valley watered by a noble spring, which runs into one of the upper branches of the Huaqui River, which is but a few miles distant. Here I succeeded in meeting a few of the Apaches, and obtained a guide who went about 20 miles, and described the rest of the route to the San Pedro. He was afraid to venture further, and returned alone over the plain. The point where he turned back was within fourteen miles of the presidio of Fronteras. It was in the mountain pass that we first saw the wild bulls, from which the command obtained their exclusive supply of meat for about two weeks. They are the increase from those abandoned when the two ranches of San Bernardino and San Pedro (on the river of the same name) were broken up, in consequence of incessant Indian attacks. They have spread and increased so as to cover the country; they were as wild and more dangerous than buffalo.

256 "I made the next 62 miles, to the San Pedro River, with little more difficulty than cutting my way through dense thickets of mesquit' and many other varieties of bushes, all excessively thorny. It was but 27 miles, without water, over the last divide; there was snow one day, and for about two weeks, at that time, we suffered with cold. I descended the San Pedro 55 miles to a point whence a trail goes to Tucson."

(Appended to the report of Col. Cooke is a map showing the route of his march from the San Bernardino Ranch to and along the San Pedro Valley to a point below the junction of the San Pedro River with Babcomori Creek.)

From the itinerary of W. H. Emory, 1st Lieut. U. S. Corps of Geographical Engineers.

(Page 45.) (General orders were issued designating the force to march on to California. It consisted of three hundred United States 1st Dragoons, under Major Sumner, who were to be followed by the battalion of Mormons, five hundred in number, commanded by Captain Cooke.) "Colonel Doniphan's regiment was to remain in New Mexico until relieved by Colonel Price's regiment, which was daily expected to reach there from the United States, when Colonel Doniphan's regiment was directed to effect a junction with General Wool at Chihuahua.

"Major Clarke's two batteries of artillery were divided—one company, Captain Fisher's, to be left in New Mexico; the other, Captain Weightman's, to accompany Colonel Doniphan. The battalion of foot, under Captain Agney, was directed to remain in Santa Fe.

"Thus was the Army of the West divided into three columns, to operate in regions remote from each other, and never to unite again in one body.

"September 25.—I received notice that the General was to march at 2 p. m. for California. His force consisted of three hundred dragoons, to be followed by a battalion of Mormons on foot that had not
257 yet arrived in Santa Fe."

From the itinerary of W. H. Emory, First Lieut. U. S. Corps of Geographical Engineers, under date of November 5th, 1846.

(Page 76.) "The dry creek by which we crossed to the San Pedro River was the great highway leading from the mountain fastnesses into the plains of Santa Cruz, Santa Anna, and Tucson, frontier towns of Sonora. Along this valley was distinctly marked the same fresh trail noted yesterday of horses, cattle, and mules.

"The bed of the creek was deeply cut, and turned at sharp angles, forming a zigzag like the bayoux laid by sappers in approaching a fortress, each turn of which (and they were innumerable) formed a strong defensive position. The Apache, once in possession of them, is secure from pursuit or invasion from the Mexican.

"Since the 1st of November we have been traversing, with incredible labor and great expenditure of mule power the stronghold of these mountain robbers, having no other object in view that making our distance westward; yet here we are at this camp, only five seconds of time west of camp 89 at Disappointment Creek, and one minute and four seconds west of our camp at the mouth of the San Francisco.

"Nature has done her utmost to favor a condition of things which has enabled a savage and uncivilized tribe, armed with the bow and lance, to hold as tributary powers three fertile and once flourishing States—Chihuahua, Sonora, and Durango—peopled by a Christian race, countrymen of the immortal Cortez. These States were at one time flourishing, but such has been the devastation and alarm spread by these children of the mountains that they are now losing population, commerce, and manufactures at a rate which, if not soon arrested, must leave them uninhabited."

(Page 77.) "Strolling over the hills alone, in pursuit of seeds and geological specimens, my thoughts went back to the States, and when I turned from my momentary aberrations I was struck most forcibly with the fact that not one object in the whole view, animal, vegetable, or mineral, had anything in common with the products of any State in the Union."

258 (Page 98.) "The country from Arkansas to this point, more than 1,200 miles, in its adaptation to agriculture, has peculiarities which must forever stamp itself upon the population which inhabits it. All of North Mexico, embracing New Mexico, Chihuahua, Sonora, and the Californias as far north as the Sacramento, are, as far as the best information goes, the same in the physical character of its surface, and differ but little in climate or products.

"In no part of this vast tract can the rains from Heaven be relied upon to any extent for the cultivation of the soil. The earth is destitute of trees, and in great part also of any vegetation whatever.

"A few feeble streams flow in different directions from the great mountains which in many places traverse this region. These streams are separated, sometimes by plains and sometimes by mountains, without water and without vegetation, and may be called deserts so far as they perform any useful part in the sustenance of animal life.

"The cultivation of the earth is, therefore, confined to those narrow strips of land which are within the level of the waters of the streams, and wherever practiced in a community with any success or to any extent, involves a degree of subordination and absolute obedience to a chief repugnant to the habits of our people."

Extracts from Sen. Ex. Doc. No. 121, 32d Congress, 1st session—Report of Lieutenant-Colonel J. D. Graham, addressed to Colonel J. J. Abert, Chief of the Corps of Topographical Engineers.

(Page 34.) "September 8, 1851. * * * Our mules were nearly fagged out, and indeed my wagon lagged behind. Lieutenant Whipple's being better equipped and drawn by six picked mules went ahead. Long after dark I reached the San Pedro very much fatigued. Lieutenant Whipple had arrived a little before me, and hospitably shared his supper and blankets with Mr. Lawson (my clerk) and myself that night.
259 My ambulance with the Senorita Inez got along with those of us who were on horseback. My baggage wagon did not arrive. Messrs. Clark and Wright encamped with it about three miles back, without water. Our march to-day was estimated at forty-three miles."

(Page 36.) "September 12, 1851: Continued our march early this morning. We had not gone far when we perceived some fine, large, wild cattle. As soon as they winded us they ran. Mr. Lawson, myself, and my Mexican servant, Guadalupe Ortega, who is a perfect horseman, gave chase, but they went at such a pace that we could not overtake them without losing too much time. One of them, a large bull as black as jet, once halted and turned around, giving us a look of defiance, but we all three rushed at him, when he wheeled and ran away."

(Page 39.) "September 15, 1851: * * * At this place the ravine is contracted by the hemming in of the mountains on either side to a narrow pass wide enough for a stream to flow through, which is bordered for a long way below by a boggy swamp. The mountains all around were lofty and very broken; on the opposite side of the stream, a little below us, were several adobe (mud) buildings in ruins. They were evidently the remains of one of those ranchos found in many places in the north of Sonora, where settlements were made wherever good ranges of grass and water were found suitable for grazing large herds of cattle. During the government of old Spain the Comanche and Apache Indians, knowing and fearing the power of that nation, had become the allies of the Mexicans of the northern provinces, and were extensively employed by them as herders at all these herding ranchos. It was in this way that so many of the Indians of these tribes learned to speak the Spanish language—in an imperfect manner, to be sure, but well enough to be understood.

"At a latter period, long after the Mexican revolution, when the Government of that Republic became weak in these provinces, and the Indians had learned to feel their own comparative strength, they rose against

these establishments, and killing many of the Mexicans, drove the rest into the interior, and were thus left in possession of the herds."

260 (Page 42). "September 17, 1851: * * * It was now decided that we would return to Mr. Whipple's camp on the San Pedro, where we had plenty of sheep and cattle. Our camp was accordingly broken up, and we marched early enough, by the same route we had come, to reach the head of the valley before night. After rising from it to the plains we encamped at a water hole a little before sunset, very near the place where my party had halted on the 14th to reconnoitre this valley.

"We found here on a hillside plenty of wood for cooking.

"September 18, 1851: Marched at the usual hour, still upon the back track. Passed near midday a herd of wild horses, and several herds of antelopes in the course of the day. My party went in advance of Mr. Bartlett's, keeping the proper trail for the camp on the San Pedro. When it was near time to halt for the night, Mr. Bartlett sent a man, with his compliments, to say that by bearing more to the right (which was over some pretty rough ground) he had found an old deserted rancho on the borders of a small stream, and inviting me to come and encamp with him. We did so, which cost us an additional march of four or five miles over some very rough ground. We reached this spot about half an hour after sunset.

"This proved to be the old rancho of Babacomori, as we afterwards learned. It was an important grazing establishment, and was depopulated about the time and in the manner already alluded to. It is situated on one of the branches of the San Pedro, called also by the name of the Babacomori."

(Page 42.) "September 19, 1851: On rising this morning I found that Mr. Bartlett had dispatched two men, about two hours before daylight this morning, to Mr. Whipple's camp on the San Pedro, for some sheep and flour. He gave me no notice of his intention, which I thought strange, because I wanted to communicate with Lieutenant Whipple. His camp is not more than twenty-five miles north-northeast of us.

261 "This morning after breakfast we saw two men approaching our camp from the south, at full run. They proved to be two Mexican soldiers from Santa Cruz, and were on their way to Lieutenant Whipple's camp on the San Pedro, with a letter from General Conde addressed to any person or persons, either of the Mexican or American commission, whom they might happen to fall in with. Fortunately our camp happened to be in the route they were pursuing, and it was delivered to us. This letter, written in Spanish, stated that General Conde, with his son and others of his party, after eight days' wandering, had at last found Santa Cruz. The route they had pursued on starting from the San Pedro was much too far to the west, and had taken him by a circuitous course through the deserted village of Tubac, etc. He had suffered much from hunger, as he had been out eight days and had only two days' provisions when he left the San Pedro. The letter stated that should these men meet anyone of either commission wishing to go to Santa Cruz, they would guide them thither. They were of the provincial troops stationed at that place, which they left yesterday.

"We were now informed for the first time that the California emigrants had varied their route, in part, from Colonel Cooke's road, so as

by bending to the south to pass through Santa Cruz, and thus avoid a very rough portion of it. It was in consequence of this that the portion of it which I had expected to encounter was obliterated.

"Mr. Bartlett informed me that he should go to Santa Cruz. It was not a matter for me to interfere with, as he would have his own way, though it would keep Lieutenant Whipple waiting on the San Pedro before undertaking the Gila survey. It was my best route to go to the copper mines.

"It was necessary now to send another courier to the San Pedro for an additional supply of provisions for this journey. A soldier was armed and mounted on one of my best mules and dispatched on this errand.

"A great many fish were taken in the Babacomori to-day. From their appearance I should say there are several quite new species among them. They were carefully preserved as specimens to take home. Specimens
of plants were also preserved.

262 "The two Mexican soldiers remain with us as guides to Santa Cruz.

"September 20, 1851: This morning Mr. Clark and I were about to reconnoitre for a good place for our wagons to cross the Babacomori stream when we perceived our messenger of yesterday returning to camp leading his mule, which was very lame. He reported that he had got within seven or eight miles of Lieutenant Whipple's camp, when he saw about thirty Indians, and, being alone, he hid himself in a ravine when they approached, and he thus eluded them. There he remained all night. The Mexican soldiers now told us there were a number of Mexicans engaged in hunting wild cattle upon this stream and the San Pedro to supply the troops at Santa Cruz with beef, and that these were probably the men our soldier had taken for Indians. This afterwards proved to be true. The Mexicans are about the color of Indians—that is, the class who pursue this occupation—and they dress and are equipped very much like them, so that the mistake was a very natural one. Our interpreter and another man were then sent on this errand. Not long after they left us the messenger who went early yesterday morning returned with four sheep, already butchered. A portion of this meat was immediately issued.

"To-day a Mexican gentleman, Senor Garcia, to whom belonged the party that was hunting wild cattle, arrived at our camp. He is very intelligent, and gave us much interesting information of the general topography of the country."

(Page 44.) "September 22, 1851: We started this morning for the long-sought Santa Cruz. Some of the Mexican cattle hunters went in advance of us. We overtook them late in the afternoon and found them skinning a wild bull. They had another tied by the horns to a tree. They gave us as much of the meat as we wanted, which, though very acceptable, we found very tough. It is in this way that Santa Cruz is supplied with meat."

(Page 46.) "September 23, 1851: * * * I found this village to answer very nearly to Captain Castro's description of it. Its
263 population does not appear now to exceed three hundred and fifty persons. Many are, however, absent on hunting expeditions after wild cattle, &c. Perhaps there may be between four hundred and four hundred and fifty residents belonging here when all are at home."

(Page 47.) "September 24 to 27, 1851: * * * On the 27th we succeeded in purchasing about eighty pounds of very bad drief beef, for which we had to pay the price of thirty-seven and a half cents per pound.

"More was offered at that rate, but we declined it, as, having now flour enough to last my party to the copper mines, we determined to start on the 28th and depend, in part, on killing wild cattle if we should be short in meat."

Extract from "The U. S. and Mexican Boundary Survey," by W. H. Emory.—Vol. I.

The report of C. C. Parry to Col. Emory, of date April 1, 1854.

(Page 17.) "On this route we passed gradually to a divide which rises on its western aspect to an eastern branch of the Upper San Pedro Valley. The country here begins to assume most attractive features. To the north and west rise high mountain ranges, clothed with pine and oak groves; the intervening country is everywhere carpeted with fine gamma grass, the nutricious quality of which is exhibited in the character of the numerous wild horses and cattle that luxuriate over this favored region."

(Page 18.) " * * * Beyond this the San Pedro Valley
264 spreads out in diverging branches to the east and west, thus drawing tributary a very extensive drainage."

(Page 18.) " * * * These latter points are frequently set off with the remains of deserted dwellings, plainly located with a view to defense. Other eminences commanding extensive views are occupied by rocky breastworks, serving the double purpose of watchtowers and strongholds of retreat; associated with these are also extensive rock enclosures in which the cattle were secured. All these points are suggestive of the condition of constant warfare to which this commencing civilization was subject, and under which it was at last obliged to succumb."

Extracts from "Adventures in the Apache Country," by J. Ross Browne.

(Page 21.) "For three centuries these bedouins of the desert had continued their depredations upon stock, robbing the ranches, killing the rancheros, and harassing emigrant parties. No industry could prosper under their malign influence. The whole State of Sonora was devastated and the inhabitants in a starving condition. Arizona possessed at least the pretense of military protection. It soon became infested with the refuse population of Sonora—the most faithless and abandoned race, perhaps, on the face of the earth. What the Apaches left undone in the way of murder and robbery they seldom failed to complete, and indeed were regarded with more distrust by respectable citizens than even the barbarous Indians."

(Page 24.) "The rebellion broke out in April, 1861. The Butterfield overland mail line was stopped at the same time, in view of the
265 dangers that threatened it, and an act of Congress was passed changing the route. During the month of July the only Federal troops in the Territory shamefully and without cause abandoned

it, and marched from Forts Breckenridge and Buchanan to Cook's Springs, where they heard the Texas rebels were coming. Without waiting to ascertain the number or prepare for any defense they burned all their wagons, spiked their cannon, and packed their provisions on mules over the mountains to Fort Craig. There were four companies, numbering altogether four hundred and fifty men. They had heard of the surrender of Fort Fillmore, toward which they were marching, and this caused them to take a different route. At Fort Fillmore five hundred Federal troops of the Regular Army surrendered to about two hundred and fifty renegade Texans, ragged, undisciplined, poorly armed, and badly equipped. A scattered company of these roving bandits, under the command of the guerrilla chief, Captain Hunter, numbering about one hundred, reached Tucson on the 27th of February, 1862, and took possession of that place. Most of the inhabitants had fled to Sonora for safety, or stood ready to join the rebels. It was a secession stronghold, composed almost entirely of Southern outlaws, whose sympathies were naturally opposed to the existing Government. Hunter and his party held possession of the Territory, advancing as far as the Pima villages, and even threatening Fort Yuma, till the advance of the California column in May, when they retreated to the Rio Grande. The few citizens and traders who remained loyal to the Government and the managers and workmen employed at the mines being thus left at the mercy of the lawless desperadoes—roving bands of Apaches and Sonoranians—fled from the country as fast as they could procure the means of escape. Many of them were imprisoned and some were murdered. The hostile Indians, ignorant of our domestic disturbances, believed they had at length stampeded the entire white population. On the public highways they fell upon small parties and slaughtered them. It was their boast, and is still their belief, that they had conquered the American nation. The Sonoranians, greedy for plunder, rushed in from the borders by hundreds and commenced ransacking the mines, stealing the machinery, and murdering the few employes that remained. At Tubac, the head-
266 quarters of the Arizona Mining Company, the Apaches besieged the town on one side while the Sonoranians lurked in the bushes on the other. Twenty men held it for three days, and finally escaped under cover of night. There was nothing left. The troops had burned all the stores, provisions, and groceries, public and private, that they could lay hands upon; tore down the mill at Tucson; burned the Canoa, and destroyed Government stores at Breckenridge and Buchanan worth probably half a million dollars. Treason, cowardice, or incompetency must have been the cause of these disgraceful proceedings. There was no satisfactory reason, that can now be seen, why they should have so precipitately evacuated the Territory and yielded peaceful possession to the enemies of the Federal Government.

"From that date until the last session of the Thirty-seventh Congress Arizona remained without a Territorial organization. Few people were left in the country, and there was no protection to the mines. They were all abandoned to the plundering Sonoranians, who stole the ore and destroyed the machinery. The ranches were in ruins; south and east of Tucson there was not a single inhabited spot within the boundary lines.

"I have thus at some length attempted to account for the tardy growth of this interesting Territory. It will be admitted that there is good

reason why Arizona has failed to attract a population. With wonderful resources, and a climate equal to that of Italy, it has suffered a series of misfortunes unparalleled in the history of our territorial possessions. Two great obstacles to the prosperity of the country still exist: Difficulty of access, which can only be remedied by a port on the Gulf of California, and the hostility of the Apache Indians, for which there is no remedy short of extermination."

(Endorsed:) Filed in the office of the clerk Court of Private Land Claims, Febr. 10, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

267 PLAINTIFF'S EXHIBIT 2.

Preliminary survey of the San Rafael del Valle private land grant, San Pedro Valley, Pima County, A. T.

Survey commenced Dec. 8th, 1879, under orders from the surveyor-general of Arizona, dated Nov. 26th, 1879, and contract of September 17, 1879. No. 47. Survey completed Dec. 16th, 1879.

SOLON M. ALLIS,
Deputy U. S. Surveyor.

268 San Rafael del Valle grant.—Preliminary oaths of assistants.

We, Samuel A. Manlove and Samuel K. Van Pelt, do solemnly swear that we will faithfully execute the duties of chain carriers; that we will level the chain upon uneven ground and plumb the tally pins, whether by sticking or dropping the same; that we will report the true distance to all notable objects and the true length of all lines that we assist in measuring, to the best of our skill and ability.

SAMUEL A. MANLOVE.
SAML. K. VAN PELT.

Sworn to and subscribed before me this 8th day of December, 1879.

SOLON M. ALLIS,
Notary Public, Pima Co., A. T.

We, E. J. Partridge and Thomas Miller, do solemnly swear that we will well and truly perform the duties of flagman and axeman, according to instructions given us, and to the best of our skill and ability.

E. J. PARTRIDGE.
T. MILLER.

Sworn to and subscribed before me this 8th day of December, 1879.

[SEAL.] SOLON M. ALLIS,
Notary Public, Pima County, A. T.

269 *Preliminary survey of the San Rafael del Valle private land grant, Pima County, A. T.*

Commenced survey Dec. 8th, 1879.

According to the extract from the original grant papers, furnished by the surveyor-general of Arizona, with the instructions authorizing me to execute this survey.

The grant of San Rafael del Valle is for four square Mexican leagues of land along the San Pedro River, Pima County, A. T., being four leagues in length along the general course of the river and one league in width.

From the said grant papers it also appears that the central part of the north end boundary was a sharp-pointed limy hill, rising from the valley. I therefore first searched for the above-described hill, and found the same as described, it being a sharp-pointed hill rising like a cone from the valley, and about forty feet in height, surrounded by a ledge of limestone, much decomposed, the debris giving the hill its marked limy appearance. Nothing like it was found or seen elsewhere.

SAN RAFAEL DEL VALLE GRANT, PIMA CO., A. T.,
December 9th, 1879.

Being unable, after diligent search, to find any existing monument, I set a temporary post on this hill, and the better to find and determine any monuments described in the extract from the grant papers
270 furnished me by the surveyor-general I ran a random line from this point up the centre of the valley, as near as I could judge. Therefore I ran—

Var. 11° 30′ E. by obs. on Polaris
S. 14° 25′ E. on random line

416.66, a distance corresponding to 200 cordells, the distance mentioned in the grant papers as having been measured from the centre each way and making the grant 400 cordells or four leagues long, for the Mexican vara is equal to 33 inches by common usage in California, and by authority of the Land Commissioner in a letter to the surveyor-general of California dated March 5, '52, and referred to in a decision of the Supreme Court of the United States in the case of U. S., appellant, *vs.* Evelina Perot et als., No. 143, October term, 1878.

Therefore as one cordell equals 50 varas, it also equals 1,650 inches, and 200 cordells equal 330,000 inches, which divided by 12 gives 27,500 feet, which equals 416.66 chains, U. S. standard.

After diligent search at this point for the monument described in the grant papers as the centre of the grant, and finding none, I set up a willow post 4 x 4 inches, and marked "S. R. G. No. 1," built a mound, and dug pits as per instructions from the surveyor-general.

From this post the S. E. cor. of a house made of willow posts and with adobe chimneys bears N. 23° 15′ W., dist. 26.10 chs.

The middle of Mule Mountains on the east and middle of the Huachucas on the west seem to be opposite this point, as designated in the extract from the grant papers furnished.

271 The better to find any monuments existing on the middle of the side boundaries of the grant, and to determine the proper place for such monuments, if none were found, I here turned a right angle to course of random line, and ran var. 11° 30′ E. by obs. on Polaris N. 75° 35′ E.

104.16 1/2, or 50 cordells, to centre of east side of grant. After diligent search for existing monuments, and finding none, I here set a post of ash 4 x 4 ins., squared, 5 ft. long, marked "S. R. G. No. 2," setting it in the ground 2 feet and building a monument of stones around it as per instructions from the surveyor-general.

Returning to the centre post, marked "S. R. G. No. 1," I ran a continuation of this line across the grant

Var. 11° 30′ E. by obs. on Polaris S. 75° 35′ W.

104.16 1/2 chains, or 50 cordells, to middle of west side of grant, where, after dilligent search, not finding any existing monuments, I set up a willow post 4 x 4 ins., squared, 5 ft. long, marked "S. R. G. No. 8," set two feet in the ground, with mound of earth and pits, as per instructions of surveyor-general.

DECEMBER 10TH, 1879.

Starting at the center post No. 1, as established, and continuing random line up the valley, I ran

Var. 11° 30′ E. by obs. on Polaris

S. 14° 25′ E.

416.66 1/2 chains, or 200 cordells, to center of south end of grant, where, after diligent search for existing monuments, and finding none, I set an ash post 6 x 6 inches, squared, five feet long, marked "S. R. G. No. 4."

272 Set post 2 feet in the ground, with mound of earth and pits, as per instructions from the surveyor-general.

From which an ash tree 12 ins. in diameter, on the east side of the San Pedro River, bears N. 44° 07′ E., distant 14.24 chains. This tree marked with a blaze on side facing post and three hacks on same.

A second ash tree 10 inches in diameter, with two smaller ones from same roots (one each side), and standing on the west bank of the San Pedro River, bears S. 68° 45′ E., distant 13.29 chains.

Highest point of the south spur of the Mule Mountains bears S. 65° 12′ E.

Highest point of the Huachuca Mountains, as viewed from this part of the valley (South Peak), bears S. 72° 56′ W.

A red rocky peak on bluff of Mule Mountains bears N. 61° 48′ E.

To square the end of the grant according to the extract from grant papers and instructions furnished me, I turned a right angle at this point and ran var. 11° 30′ E. by obs. on Polaris S. 75° 35′ W. along south end boundary of grant

3.63 chains, to road which runs through the valley, following its general course, and running from Charleston to Sonora,

104.16 1/2 chains, or 50 cordells, to southwest corner of grant, where, after diligent search for any existing monuments said to be "ordered there placed" in original grant papers, without success,

I set a post of ash 5 x 5 ins., squared, 5 feet long, marked "S. R. G. No. 5," built a mound of earth, and dug pits, as per instructions from the surveyor-general.

From which the highest point of the south spur of the Mule Mts. bears S. 70° E.

The north high peak of Huachuca Mts. bears S. 78° 27′ W.

273 Returning to the south center monument, No. 4, I ran var. 11° 30′ E. by obs. on Polaris N. 75° 35′ E. along southern end boundary of grant,

12.00 chains to west bank of San Pedro River, which is here 36 links wide, and flowing north, water about two feet deep, very clear and good,

104.16½ chains, to S. E. corner of grant, where, after diligent search, finding no existing monuments, I set a post of ash 4 x 4 inches, squared, 5 feet long, marked "S. R. G. No. 3," setting post two feet in the ground, and building a monument of stones and digging pits, as per instructions.

From which sharp, red peak, on red bluffs of Mule Mts. bears N. 56° 46′ E.

Mt. Baldy, Santa Ritas, brs. N. 70° 16′ W.

Turning a right angle from line run to this point as south end boundary, I ran var. 11° 30′ E. by obs. on Polaris N. 14° 25′ W. along eastern boundary line,

14.78 chains to a point on a high bluff on mesa, from which an iron wood tree bears N. 73° 10′ W. dist 95 lks.

DECEMBER 11, 1879.

415.45 chains reached post No. 2, set on middle of east side of grant line, striking 55 lks. east of post. As this line ran over rough ground covered with brush, and the center or random line being run over perfectly smooth ground, and post accurately measured in, I assumed the distance as correct, although measuring 1.21½ chs. short.

From this point I proceeded to middle of west side of grant to post No. 6, already described, and ran along western boundary line
274 var. 11° 30′ E. by obs. on Polaris S. 14° 25′ E.

85.00 chains, to steep bank of dry arroyo 5 chs. wide, running N. of E.

DECEMBER 12, 1879.

90.00 chains south bank of same. Ascend sloping mesa.

130.00 chains summit of same, descend towards the south.

165.00 chains to steep bank of dry arroyo running east.

168.00 chains south bank of same. Begin ascent of sloping mesa.

220.00 chains summit of rise, begins to descend.

275.00 chains steep bank of dry arroyo running east.

279.00 chains south bank of same. Country quite smooth from here.

415.51½ chains reached post at southwest corner No. 5, as already described, line striking 50 links west of corner.

As this line was run over rough ground, with ravines, brush, &c., and the center or random line being on smooth ground, and post accurately measured in, I assumed this line of correct length though it was measured 1.15 chains short.

DECEMBER 13, 1879.

Proceeded to post No. 2 at middle of east side line and continued the east boundary line.

I ran var. 11° 30′ E. by obs. on Polaris N. 14° 25′ W.

416.66½ chains from this point to NE. cor. of grant, where, after diligent search for any existing monuments without success, I set a
275 temorary post and turned a right angle to the east side line just run to square the end of the grant according to notes of original grant papers and instructions from the surveyor-general, and ran var. 11° 30′ E., S. 75° 35′ W.

87.55 chains along north end boundary of grant to San Pedro River, which here runs N. 14° W. and is 30 links wide.

104.19½ chains reached a point on centre of random line 1.18 chains south of temporary post set up on the limy hill on starting the survey. As the line measured through centre of the valley from this post was on smooth ground, and the east side line over rough ground with much brush, I assumed the post at limy hill to be in correct place and returned to NE. cor. of grant and adjusted the temporary post to its final position by making this side to measure from center of east side to corner 1.18 chains less, or 415.48½ chains, and, assuming the real distance to be correct, moved the post out 1.18 chs. N. 14° 25′ W. I also set the post 0.03 chains west of line run, which makes the measurement of north end correct.

Post at NE. cor. of grant was of mesquit 5 x 5 inches squared, 4½ ft. long, marked S. R. G. No. 9, and set upon a ledge of rocks, with a monument of stones built around it, as per instructions from the surveyor-general.

From which a monument of stones on summit of a large, flat, smooth hill bears S. 30° 34′ W., distant 17.6 chains.

A tree on summit of rough butte at head of valley, near north end of grant, bears S. 50° 40′ W., dist. 82 chains.

The large, smooth hill above spoken of is the last of a series projecting into the valley from the NE.

276 DECEMBER 15TH, 1879.

At limy hill, heretofore described, at center of north end of grant, I set on its summit a willow post 5¼ x 5 inches squared, 4½ ft. long, marked S. R. G. No. 8, one foot in ground, on ledge of limestone, and built a monument of stones around it 3 ft. high, according to instructions.

From which Bronko Hill bears N. 12° 21′ W.

Tree on steep, rocky bluff at head of valley S. 44° 30′ E., distant 44 chains.

San Pedro River, nearest point, bears N. 75° 35′ E., distant 16.51 chains; here 30 links wide, running west of north.

Mt. Baldy bears N. 80° 49′ W.

Thence I ran a long northern boundary line.

Var. 11° 30′ by obs. on Polaris.

39.17 chains S. 75° 35′ W. to road to Charleston running N.

104.16½ chains to NW. corner of grant, where, after diligent search for existing monuments without finding any, I set a willow post 4¼ x 4 inches squared, 5 feet long, marked S. R. G. No. 7.

Set post two feet in the ground, and built mound of earth and dug pits, as per instructions.

From which highest point of Tombstone Mts. bears N. 17° 21′ E.; NE. corner of Corbin mill bears N. 1° 34′ E., about two and a half miles distant.

Mt. Baldy, "Santa Ritas," bears N. 80° 15′ W.

Bronko Hill bears N. 28° E. Tree on rocky bluff near end of grant bears S. 89° 59′ E., dist. 137 chains.

Turning a right angle at this corner, I ran thence along western boundary line, var. 11° 30′ E. by obs. on Polaris, S. 14° 25′ E., over a rough mesa covered with catsclaw and blackthorn brush.

277 415.76½ chains to post already set up at middle of west side of grant and numbered 6, as heretofore described, line striking 0.60 chains west of post.

As this line was over a very brushy and rough mesa, while the center line was on smooth ground, and this post accurately measured in, I assumed the distance correct, although measured 0.90 chains short.

Reaching this post completed survey.

GENERAL DESCRIPTION.

In searching for monuments referred to in extracts from original grant papers furnished, could find no artificial one.

The natural objects named were found nearly as indicated.

Namely, the small limy hill at center of north end, some little hills or foothills of the mesa near the center of grant.

I also found the centre of each side to be apparently opposite the middle of the Mule and Huachuca mts., respectively.

The valley at the north end narrows to a gorge between a high mesa with rocky bluffs and the foot of the high, rocky butte or bluff mentioned in notes.

The north boundary line of grant crossing the river about 30 chains north of said butte in a little valley, which here widens towards the north.

Going south, the valley widens rapidly for two miles, when it rapidly narrows and the mesa on the west side encroaches nearly to the middle and ends in an abrupt point quite near the river.

Again widening, the valley presents a pretty uniform width of from ¾ to one mile, until the south end is approached, when it again nar-
278 rows, the mesa from the west again coming quite near the center line. At the SW. corner, however, the mesa becomes a smooth level plateau, reaching almost unbroken south and west to the foothills of the Huachuca Mts.

About two miles from the NE. corner of grant, and half a mile west of east line of grant, there is found a beautiful never-ceasing spring of pure warm water flowing into the San Pedro.

Area of grant includes 17,360.763 acres.

SOLON M. ALLIS,
U. S. Deputy Surveyor.

LIST OF NAMES.

A list of the names of individuals employed to assist in running, measuring, or marking the lines and corners described in the foregoing field notes of the survey of the exterior boundaries of the San Rafael del Valle land grant, Pima County, Arizona, showing the respective capacities in which they acted:

Samuel A. Manlove, chainman.
Samuel K. Van Pelt, chainman.
Thomas Miller, axeman.
E. J. Partridge, flagman.

FINAL OATHS OF ASSISTANTS.

We hereby certify that we assisted Solon M. Allis, U. S. deputy surveyor, surveying the exterior boundaries of the San Rafael del Valle land grant, Pima County, Arizona, and that said survey has been in all respects, to the best of our knowledge and belief, well and faithfully executed and the boundary monuments planted according to the instructions furnished by the surveyor-general.

T. MILLER, *Axeman.*

279 SAML. K. VAN PELT, *Chainman.*
SAMUEL A. MANLOVE, *Chainman.*
E. J. PARTRIDGE, *Flagman.*

Sworn to and subscribed before me this 29th day of December, 1879.

[SEAL.] SOLON M. ALLIS,
Notary Public, Pima County, A. T.

FINAL OATH OF DEPUTY-SURVEYOR.

I, Solon M. Allis, U. S. deputy-surveyor, do solemnly swear that in pursuance of a contract with John Wasson, United States surveyor-general for Arizona, bearing date the 17th day of September, 1879, I have well, faithfully, and truly, in my own proper person, and in strict conformity with the instructions furnished by the surveyor-general, the Surveying Manual, and the laws of the United States, surveyed all those portions of the exterior boundaries of the San Rafael del Valle land grant, Pima County, Arizona, as are represented in the foregoing field notes, as having been surveyed under my directions; and I do further solemnly swear that all the corners of said surveys have been established and perpetuated in strict accordance with the Surveying Manual and printed instructions, and also in accordance with the additional requirements contained in circular instructions from the U. S. surveyor-general for Arizona, dated September 1st, 1873, regarding the establishment of corner boundaries of public surveys, and that the foregoing are the true and original field notes of such surveys.

SOLON M. ALLIS,
Deputy Surveyor.

Sworn to and subscribed before me this 5th day of January, 1880.

[SEAL.] JOHN R. FARRELL,
Notary Public.

280 U. S. SURVEYOR-GENERAL'S OFFICE,
Tucson, Arizona, Jan'y 16, 1880.

The foregoing field notes of the preliminary survey of the exterior boundaries of the private land claim known as the rancho of San Rafael del Valle, executed by Solon M. Allis, D. S., under his contract of the 17th of September, 1879, having been critically examined and the necessary corrections and explanations made, the said field notes and the surveys they describe are hereby approved.

(Signed) JOHN WASSON,
Surveyor-General.

TUCSON, ARIZONA, *April 21st, 1891.*

The foregoing field notes of the survey of the exterior lines of the San Rafael del Valle private land grant are correctly copied from the original on file in the office of the United States surveyor-general for the district of Arizona.

[SEAL.]

ROYAL A. JOHNSON,
U. S. Surveyor-General, District of Arizona.

(Indorsed:) Filed in the office of the clerk Court of Private Land Claims Feb. 11, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

281 PLAINTIFF'S EXHIBIT 3.

Map. (Here follows blue print marked page 281.)

282 PLAINTIFF'S EXHIBIT 4.

Before the U. S. S. gen'l for Arizona, in the matter of the rancho of San Rafael del Valle, Camou Brothers, claimants.

FRANCISCO S. LEON, a witness called by the U. S. surveyor-general, being duly sworn, testified as follows:

Questions by SURVEYOR-GENERAL:

Question 1. What is your name, age, occupation, and place of residence?

Ans. My name is Francisco S. Leon; 60 years of age; occupation, ranchero, and reside in Tucson.

Ques. 2. How long have you resided in Tucson?

Ans. I was born in Tucson, and have lived there all of my life.

Ques. 3. Are you personally acquainted with the rancho of San Rafael del Valle, situated in the San Pedro Valley and granted by the Mexican Government to Rafael Elias?

Ans. I am, and have known said rancho for more than thirty years. I have often been upon the same and have travelled over it a great many times. I do not know its boundaries, but I know that it is situated on the San Pedro River.

Ques. 4. What do you know about the possession of said rancho by the grantee, Rafael Elias?

Ans. I know that Don Rafael Elias had possession of said rancho in times past, and that he had much stock thereon.

283 Ques. 5. Do you know when the possession of said rancho was abandoned by Don Rafael Elias?

Ans. I can not remember the date, but it was before the time of the war with the United States.

Ques. 6. What was the cause of said abandonment?

Ans. It was abandoned on account of the Apache Indians, who attacked this rancho, as well as that of the Babocomari, killing the people, burning the ranch house, and driving off the stock.

Ques. 7. Do you think it was possible with safety to himself and stock for Elias, after he was driven off by the Apache Indians, to have held possession of said rancho any time prior to that at which the Indians were suppressed by the American troops?

Ans. It would have been impossible; and I know that within a few years past depredations have been committed on this rancho of San Rafael del Valle.

F. S. LEON.

Subscribed and sworn to before me this 28th day of October, 1879, as witness my hand and seal of office.

[SEAL.] JOHN WASSON,
U. S. Surveyor-General.

(Indorsed:) Filed in the office of the clerk Court of Private Land Claims Feb. 11, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

284 PLAINTIFF'S EXHIBIT 5.

Before the U. S. surveyor-general for Arizona, in the matter of the Rancho of San Rafael del Valle; Camou Hermanos, claimants.

PASQUAL CRUZ, a witness called by the surveyor-general, being duly sworn, testified as follow:

Questions by SURVEYOR-GENERAL:

Ques. 1. What is your name, age, occupation, and place of residence?

Ans. My name is Pasqual Cruz; I do not know exactly my age, but I was born in the last century; have been a laborer, and reside in Tucson.

Ques. 2. How long have you lived in Tucson?

Ans. Since I was a child.

Ques. 3. Were you acquainted with Don Rafael Elias, owner of the rancho of San Rafael del Valle?

Ans. I was acquainted with him.

Ques. 4. Are you acquainted with the rancho of San Rafael del Valle, situated in the valley of the San Pedro?

Ans. I knew that there was a rancho called San Rafael del Valle, situated in the valley of the San Pedro, and owned by Don Rafael Elias, but I do not know the exact locality of said rancho.

Ques. 5. Can you state the time, more or less, when Don Rafael Elias occupied the rancho of San Rafael del Valle?

Ans. I can not state the time, but it was many years since.

285 Ques. 6. Do you know the reason why said rancho was abandoned by Elias?

Ans. I know that it was abandoned many years since by Elias on account of the enemies, the Apache Indians.

Ques. 7. Do you think said rancho could have been occupied with any degrees of security to life and property from the time it was abandoned until within a few years past?

Ans. It could not.

PASCUAL (his x mark) CRUZ.

Subscribed and sworn to before me this 29th day of October, 1879, as witness my hand and seal of office.

[SEAL.] JOHN WASSON,
U. S. Surveyor-General.

(Endorsed:) Filed in the office of the clerk Court of Private Land Claims, Feb. 11, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

286 PLAINTIFF'S EXHIBIT 6.

Map of San Rafael del Valle P. L. claim. (Surveyed by Geo. J. Roskruge), June 1, 1891.

(Here follows blue print marked p. 286.)

287 PLAINTIFF'S EXHIBIT 7.

Map.

(Here follows blue print marked p. 287.)

288 And be it further remembered that afterward, to wit, on the 9th day of May, A. D. 1899, the same being the 26th day of the January term, A. D. 1899, the hearing of this cause was resumed, and the same being concluded and argument made by counsel for the respective parties, the cause was submitted to the court for decision and was by the court taken under advisement.

The testimony, both oral and documentary, offered and submitted on said May 9th, 1899, is as follows, to wit:

289 TUCSON, ARIZONA, *May 9th, 1899.*

JUAN PEDRO CAMOU
vs.
UNITED STATES. } No. 3. San Rafael del Valle grant.

On May 9th, 1899, the above case came up for hearing and the following testimony was heard by the court:

GEORGE J. ROSKRUGE, recalled by the plaintiff for further direct examination, testified as follows:

Mr. HERRING:

Q. Look at the photograph now shown you and state if you know by whom that was taken.

A. This photograph was made by myself.

Q. What is that photograph of?

A. Of the calcareous knowl, or lime hill, on the north center of the San Rafael del Valle private land grant; and it also marks the south center of the Boquillas private land grant

Q. Do you mean the Rancho de las Boquillas y Nogales?

A. Yes, sir.

Q. San Juan de Boquillas y Nogales?

A. Yes, sir.

(We offer this photograph in evidence, and we would like to have it marked as Plaintiff's Exhibit No. 3.)

Q. You have been over that country to the north, south, east, and west of this lime hill shown on this photograph?

A. Yes, sir.

Q. You have been south as far as the boundary line?

A. I have.

Q. Is there for many miles anything of the nature of this calcareous knowl shown in this photograph?

A. No, sir; there is nothing like it in the whole country. I went down there in '89; I had occasion to go down there where the boundary monuments of the Las Nogales Boquillas grant is—Nogales de Elias Boquillas grant—and I went to this knowl, and I was taken there by parties.

290 Q. You mean the San Juan de Boquillas y Nogales grant?

A. Yes, sir. I was taken down to these monuments, this little hill, and shown it as being the south center of the Boquillas grant, and I was taken to several other monuments of that grant further north. I was not satisfied with the monuments further north, and probably one or two months after I went back and made a thorough search up and down over on the sides of the monuments of the Boquillas grant, on both sides, to further satisfy myself that the lime hill described, that I have just mentioned in this photograph, was the hill marking the south boundary of the Boquillas grant, and also the north boundary of the San Rafael del Valle grant.

Q. You may state whether it is an object which may be seen from a long distance.

A. No, sir. You can not see it from the west and but a very little distance from the east, probably a mile or two. It is a little knowl that rises up from the valley and is surrounded by somewhat higher ground.

Q. Since the last meeting of this court, when you were here as a witness, have you been down the San Pedro Valley?

A. I have.

Q. How recently were you there?

A. I was there the 28th of last month, in company with yourself.

Q. State whether on that occasion you were shown the San Pedro Valley on the San Rafael grant in the vicinity of the center of that grant as shown in your map.

A. I was in the vicinity of the center of the grant as shown on my map, and went on the little hills described by myself in my last examination as being on the west of the center of the grant. At that time I believed I testified that they were a thousand to fifteen hundred

291 feet, but I found that the little hills came out a little near the river, and, in fact, these little hills are probably 2,700 feet from the center of the grant to the west. I went on the summit of one of these little hills; it is near the north bank of the big arroyo coming out of the Huachuca Mountains, and while there I called Colonel Herring, who was in a buggy at the foot of the hill that came from the west. From there I showed him other little hills which I had seen when I was making surveys.

Q. At what time are you speaking now?

A. About '91. I was furnished with two documents. One document was a copy of the expediente, which said that that center monument was near, at some little mountains. I also was furnished with a certified copy of the field notes of the survey of the San Rafael del Valle private-land claim, made by Joseph Alire, and on reaching this valley he said he measured two hundred cordels down the valley. I made a very diligent search for the monument described in the grant, as stated in the grant.

I set a willow post, etc. From this certified copy and from the copy of the expediente that I had, which says that the center of the grant was some small mountains—he says the survey was begun in the vicinity of some small mountains—I naturally supposed that was the center monument of this grant, and that there was some small mountains.

Q. Have you learned anything since which has corrected that in your mind?

A. Yes, sir.

Q. In what way?

A. After the trial in this court which was had several years ago, in which I testified about this monument, which never existed, Colonel Herring called my attention to the fact that there was no monument at the center, that there was some small hills, and that the expediente
292 called for no mountains—the expediente called for no mountains at the center; they could not be called mountains, for they are small hills. That put a different face on it altogether. I was testifying to what I supposed to be a mountain—the center of this grant was near some small mountains, and in fact that was no mountains in the center of this grant; there were no small hills, and I did not know what I was talking about, because I testified to what really was false; that is what I was led to believe.

Q. You were not testifying to what you knew to be false?

A. I was misled from the papers.

Q. That is, data given you; false data?

A. Yes, sir; that is what I mean. And in going down this valley I took no notice of small hills, because I was looking for small mountains somewhere around in the vicinity of the center of that grant for three or four days. I went over the little hills, and took no notice of them, because I was looking for small mountains, not looking for a monument of stones.

Q. Since that time you have more particularly examined that ground?

A. Yes, sir; I made a thorough examination of that ground and found, as I have stated—near the center are some small hills on the west and east sides of the valley; there are small hills up and down the valley.

Q. Is it your wish to make a correction of the statement that you formerly made in regard to these hills?

A. Yes, sir. I said in a former examination that the only small hills that I found were down on the section course of the San Pedro grant; there were little hills there out in the valley from 150 to 200 feet high. I passed by some hills; I was looking for big hills.

Q. Did you take the height of one of these hills that was in the center of the grant?

A. Yes, sir.

Q. How high was it?

A. It was forty-two feet high.

293 Q. In what way did you distinguish a hill from the surrounding country there?

A. I will call a mountain that which you would have to come down from if you wanted to get off of it.

Q. Will you state what was the condition which you found existing upon these projections?

A. I went up on top of one hill. I found it was joined to the mesa, if it formed a part of the mesa; and there are little hills made by the water formations. That is my opinion.

Cross-examination by Mr. POPE:

Q. Do you know what is called among the Mexicans lomas?

A. Yes, sir.

Q. How did these little hills that you spoke of along the San Pedro River compare with the loma, little lomas; these hills that you spoke of?

A. It is hard to tell what a loma is unless you approach it and find that it is called a loma—you actually saw it.

Q. And you actually believe these are lomas?

A. I would not say; I never could tell what a loma was—that is, what I would call a loma. They are really little hills; that is what I claim.

Q. Then you do not know what a loma is?

A. I might say that I do not exactly; I can not say exactly what a loma would be.

Q. Will you describe these elevations? State what they are; what they are like.

A. I think that the hill that was 42 feet above the surrounding country—valley—that was probably, on the top, I think, about 150 feet across, or 200 feet; it is an estimate that I made. I then went on top of a little hill called the Roundtop Hill. There were other little hills on the other side of the valley; there were several little hills, that I did not go to, probably a mile across the valley; there were several little hills of the same character, and further down there were several little hills, and above on the east side.

294 Q. What is the distance of these hills that you described to Colonel Herring from the river?

A. I should say about three thousand feet. I took observations of two that were some 2,700 to 3,000 feet; a——

Q. A little over half a mile?

A. Yes, sir.

Mr. HERRING:

Q. Point out the little hills to which you have testified in your direct examination near the center of the grant as shown upon your map as the San Rafael del Valle grant.

A. Marked "H."

Mr. POPE:

Q. Mark on this map the location of these other hills that you spoke of.

A. Marked "I." There are some little hills here marked "J."

Q. Now, the little hills here that you spoke of along the valley, they are not prominent hills, but they are hills, little hills, and they are all along the valley?

A. Yes, sir.

Q. From up near the north boundary to the south boundary?

A. Yes, sir.

Q. Now, you stated that the paper, your expediente which you had on this investigation, mentioned mountains?

A. Yes, sir.

Q. Have you that expediente with you?

A. I have.

Q. On a former trial you were asked as to these hills and the location of the hills of that valley, were you not?

A. Yes, sir.

Q. And you testified then that there were no hills that were prominent to any extent?

A. Yes, sir; I testified having in my mind exactly that there were hills, prominent hills, small mountains, but not large mountains. When I came back, and after talking to Colonel Herring further, I then said I was not looking for little hills; I was looking for small mountains.

Q. As a matter of fact, on your former examination there was nothing asked you as to small mountains?

A. I do not think there was; no, sir; but that was in my mind all the time, small hills.

295 Q. There was nothing asked you on your former examination about mountains, any questions about mountains?

A. I do not think there was.

Mr. HERRICK:

Q. You have been upon the stand upon several occasions as a witness in this case. When you say nothing was said to you about small mountains, are you referring to the first examination or to the last examination?

A. The last preceding examination when the court was here; I was testifying particularly to the first examination.

Q. In your next examination did you not make a partial explanation in relation to these small mountains?

A. Since you call my attention, I do recollect that I read a part of this expediente as to there being small mountains; I had forgotten it.

Q. Now, counsel put the question to you that nothing was said to you about the mountains in your former examination in describing your survey; is it true that you did not describe it with reference to mountains in the neighborhood of that valley?

A. I described the Huachuca Mountains on the west side, and the Mule Mountains on the east side.

Q. Then you do not mean to be understood as saying to counsel today that there was nothing said in your examination about mountains?

A. I will have to take that back, too. I was referring to my former examination, that there were no mountains mentioned in this expediente which was on the outside of the grant, as being on the east side of the valley.

PHILIP CONSTANT, sworn on the part of the plaintiffs, testified upon direct examination by Mr. Herring, as follows:

Q. What is your name and occupation?

A. Philip Constant; surveyor.

Q. Do you occupy any official position in this county?

A. I do.

Q. What is it?

A. I am county surveyor, and city surveyor of this city.

296 Q. Are you familiar with the grant in the San Pedro Valley?

A. No; I am not familiar with that section, but over about four or five miles north of the international boundary line, I am familiar with that.

Q. Several miles north?

A. Yes, sir.

Q. Do you know the place on the river which is known as Heffler's place?

A. Yes, sir; I do.

Q. State whether you have been upon that place recently?

A. Yes, sir; I was to that place recently.

Q. Will you look at this map now in evidence—map of the San Rafael del Valle grant—at a point on that map marked Heffler's, which is a square diagram, and state if you go to the west, on a line nearly due west, a line passing through the northern part and near the northern limit of that Heffler's place, would you come to any artificial object?

A. Yes, sir; if I went on the line westerly about 6 or 7 yards, I come to a little old mound of stone.

Q. How large is that?

A. About ten feet base, a foot and a half high.

Q. What was that pile of stones? Tell me, as a surveyor.

A. It is a kind of a field mark; it defines some boundary.

Q. Monument of some kind?

A. Yes, sir.

Q. Now, going nearly due east on that same line, do you come to any object?

A. Yes, sir; I come to the monuments, about two and a half miles from that place.

Q. How much of a monument was that?

A. Six feet base, three feet high.

Q. What evidence, if any, does it bear of a monument?

A. It compares to the little old monuments.

Q. Where are these two monuments situated with reference to

297 the southern boundary of this grant as shown on this map?

A. It would be more or less coincide with this line here.

Q. As a southern boundary line here (undesignated).

Q. You did not give the distance of that first one.

A. The distance is about two and one-half miles.

Mr. POPE. No cross-examination.

Mr. HERRING. I desire to offer the description of the San Juan de Boquillas y Nogales grant and record. I will put in a translation of the whole expediente—so much of the expediente of the San Juan de las Boquillas y Nogales grant as shows the making of that grant and the San Rafael del Valle grant. I will have copies made of that and file them. The petitioner rests.

Mr. POPE. The Government desires to offer in evidence the expediente of the Babacomori grant, heretofore tried in this court. We will supply copies. (Marked "Government's Exhibit A.")

The Government has no other evidence.

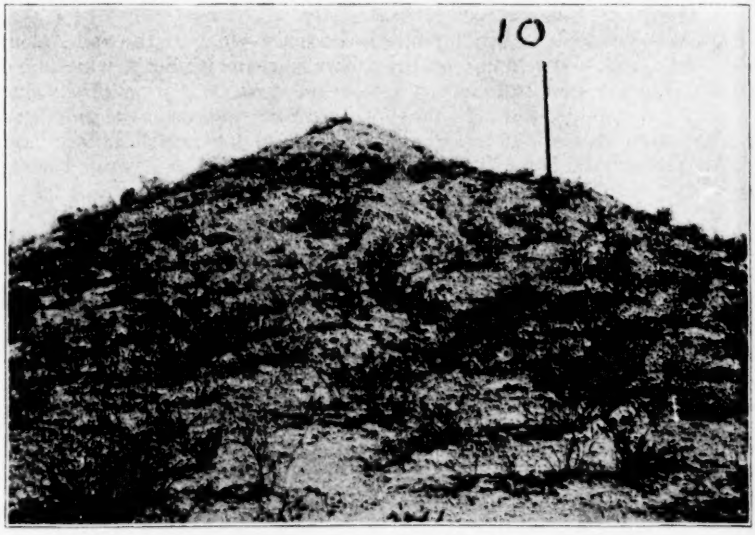
TUCSON, ARIZONA, *May 11th, 1899.*

I hereby certify that the above and foregoing eight and a portion of the ninth page contains a full, true, and correct transcript of all the testimony taken down by me in shorthand in the hearing of the above case in open court on the first-named date.

W. J. MCPHERSON,
Official Stenographer.

(Here follows photograph marked p. 298.)

298 PLAINTIFFS' EXHIBIT 3–1.



(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 9, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

299 GOVERNMENT'S EXHIBIT A.

Copia del expediente y diligencias practicadas en la medida de ocho sitios para cria de ganado mayor y caballada en los parages nombrados "San Ignacio del Bavocomari" á favor del Cº Ygnacio Elias y Doña Eulalia Elias.

(Endorsed:) Filed in the office of the clerk court of private land claims May 9, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

300 Una estampilla de cincuenta centavos debidamente cancelada.

Cº TESORERO GENERAL:

Ignacio Bonillas, vecino de Nogales, y accidentalmente en esta Capital, ante Vd comparesce y expongo: Que como consta por la carta que original acompaño, el Sr. Robert Perrin, dueño del terreno denominado "San

Ignacio del Babocómari, situado en el Territorio de Arizona, Estados Unidos del Norte, necesita una copia certificada del expediente relativo á dicho terreno que existe en los archivos de la Tesoreria de su digno cargo, y habiendome autorizado dicho Sr. Perrin para que á su nombre solicite la copia referida, á Vd suplico se sirva disponer se me expida el testimonio correspondiente para los usos que al interesado convengan. Protesto lo necesario.

Hermosillo, Febrero 5 de 1898.

IGNACIO BONILLAS.

Recibido en siete del corriente, y como se solicita, expidase la copia que se pide.

V. AGUILAR. [RUBRICA.]

Sello 3°. 2 Reales. Años de 1822 y 1823.

Habilitado. Jurada por el Rey la Constitución en 9 de Marzo de 1820. Habilitado por el Estado de Occidente para los años de 1827 y '28. Un sello que dice: "Habilitado por la Repú'lica Mexicana para los años de 1824 y '25."

Señor TESORERO GENERAL:

Don Ignacio Elias y Doña Eulalia Elias, ante V. S. se presentan en debida forma y dicen: que necesitando terreno para bienes de campo, denuncian en consorcio de Don Rafael Elias, el Capitan Don Ignacio Elias, y Don Nepomuceno Felix, el baldio que linda con el rancho de San Pedro, en la comprensión de Santa Cruz, hasta el punto de Tres
301 Alamos, obligandonos á satisfacer á la nacion los derechos que le correspondan con lo demas que fuere de justicia, hasta adquirir el titulo de merced y confirmacion, para cuyo efecto se ha de servir Vd haber por registrado y denunciado dicho terreno baldio, por tanto, A Vd suplicamos se sirva mandar proveer como solicitamos en lo que recibiremos merced.

Arizpe, 12 de Marzo de 1827.

Por anuencia y ruego de Don Ign° Elias.

JOAQUIN ELIAS. [RUBRICA.]
EULALIA ELIAS. [RUBRICA.]

COSALÁ, *1 de Julio de 1827.*

El alcalde de policia de Santa Cruz, procederá con facultad que para ello se le confiere, sin prejuicio de tercero que mejor derecho represente y previa citacion de los colindantes á las medidas avaluos y pregones por treinta dias consecutivos de las tierras que expresa el anterior denuncio, sujetandose en todo al soberano decreto del Honorable Congreso Constituyente del Estado, N° 30 de 20 de Mayo de 1825 y al reglamento que le acompaña, y evacuadas que sean dichas diligencias, las remitirá á esta Tesoreria, citando á los postores que resulten para que ocurran por si ó por apoderados al remate que debe celebrarse en dicha oficina, previas las tres públicas almonedas de estilo. El Tesorero Gral del Estado, Nicolas Ma Gaxiola, asi lo decretó y firmó.

GAXIOLA. [RUBRICA.]

302 En el presidio de Santa Cruz, y á los cinco dias del mes de Octubre de mil ochocientos veinticcho. En vista del antecedente

decreto del Sr. Tesorero Gral, cumplase lo mandado del citado decreto fecha 1° de Julio de 1827, y al efecto, con citacion de los interesados, colindantes, perito agrimensor y demas oficiales necesarios que se deberan nombrar, pasese por mi á la Hacienda de San Pedro, con el fin de que se proceda á la mensura de los sitios que los interesados desean. El C^no Alejandro Franco, alcalde constitucional del Presidio de Santa Cruz, por este auto, asi lo determinó y firmó, con los testigos de asistencia con quienes actua por receptoria por falta de escribano segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO.

Asistencia: RAMON ROMERO.
Asistencia: FRANC° GAUNA.

En la Hacienda de San Pedro y á los diez y ocho dias del mes de Octubre de mil ochocientos veintiocho, yo, el expresado juez, siendo presente el C^no Ignacio Elias, por si y como apoderado de su hermana, Da Eulalia, los colindantes C^no Capitan Ignacio Elias y Nepomuceno Felix, el perito agrimensor, Teniente Coronel de Ingenieros, C^no Jose Maria Caballero, á quienes notifiqué é hice saber el^l auto que antecede, de que quedaron entendidos y dandose por citados y nombrados se señaló el dia veinte del mismo mes para marchar á proceder á la medida, lo que firma-
303 ron conmigo y los de mi asistencia en la forma ordinaria.

Por ALEJANDRO FRANCO.

RAMON ROMERA. [RUBRICA.]
IGN° ELIAS. [RUBRICA.]
JUAN NEPOMUCENO FELIX. [RUBRICA.]
JOSE DE CABALLERO. [RUBRICA.]

Asisa.: RAMON ROMERO. [RUBRICA.]
Asista.: FRANC° GAUNA. [RUBRICA.]

Habiendo llegado al puesto nombrado San Ignacio de Bavocómari, el dia veinte del mismo mes y año, como punto en que rematan las medidas de los C. C. Capitan Ign° Elias Gonzalez y Nepomuceno Felix, por el rumbo Este Norueste para Ueste Suroeste, acompañado del interesado, perito agrimensor, oficiales que se han de nombrar y testigos de asista., mandé que antes de comenzar la medida se hiciera una inspeccion ó vista de ojo de los terrenos que se iban á mensurar á pedimento del C^no Ignacio Elias y su ponderdante Da Eulalia, y despues de bien reconocidos, hallé ser unos parages amplios para cria de ganado mayor y menor con agua la mayor parte de ellos procedente de ojos permanentes, con solo la nulidad de ser muy resgosos con abrigaderos del enemigo Apache. Y para constancia lo pongo por diligencia que firmé con los de mi asistencia con quienes actúo.

Por ALEJANDRO FRANCO.

RAMON ROMERO. [RUBRICA.]
IGN° ELIAS. [RUBRICA.]
304 JUAN NEPOMUCENO FELIX. [RUBRICA.]
IGN° ELIAS GONZALEZ. [RUBRICA.]
JOSE DE CABALLERO. [RUBRICA.]

Assta.: RAMON ROMERO. [RUBRICA.]
Asista.: FRANC° GAUNA. [RUBRICA.]

En el mismo dia, mes y año, yo, el juez comisionado, á efecto de proceder á la mensura del terreno denunciado, en una loma pelona, frente de la Cieneguita de San Ignacio de Bavocómari, nombré para contador al C^n^ Lorenzo Sortillon, para cadeneros á los C. C. Andres Mendoza y Pablo Elias, para apuntadores á los C. C. Antonio Campoy y Mauricio Neira, y juntos con el perito agrimensor, C^n^ Teniente Coronel Jose Ma. Caballero, aceptaron los enunciados cargos, prestando cada uno de por si y en la forma correspondiente el juramento de estilo de usar fiel y legalmente de los cargos que á cada uno corresponden, sin dolo ni fraude y obrando cada uno segun su leal saber y entender, y lo firmaron los que supieron conmigo y los de mi asistencia en la forma ordinaria de que doy fe.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]
LORENZO SORTILLON. [RUBRICA.]
PABLO ELIAS. [RUBRICA.]
Por ANDRES MONTOYA, X, por ANTONIO CAMPOY Y MAURICIO NEIRA,
FRANCISCO GAUNA. [RUBRICA.]

305 Asista.: RAMON ROMERO.
Asista.: FRANC^o^ GAUNA. [RUBRICA.]

En el referido puesto y el mismo dia, mes y año, para proceder á la medida, estando presentes los interesados, oficiales nombrados y testigos de asistencia, mandé que se midiera un cordel de cincuenta varas, y atados sus extremos á dos astas, se procedió á la enunciada mensura por el perito agrimensor C^n^ Jose M. Caballero, quien colocando el agujon tomó el viento Este Norueste, cuarto al Este para Oeste Surueste, cuarto al Oeste, donde hice poner mojonera cruz, y desde dicho puesto, por el referido punto, se midieron y contaron cien cordeles que remataron en un vallecito con inmediacion á unas lomas pelonas en donde hice poner mohonera, y por ser ya tarde hice recoger la cuerda y que los oficiales y demas se retirasen á descansar hasta el dia siguiente que continuase la medida, lo que pongo por diligencia y lo firmo con los de mi asistencia y demas interesados que me acompañaban de que doy fe.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]
IGNACIO ELIAS. [RUBRICA.]
JUAN NEPOMUCENO FELIX. [RUBRICA.]
IGN^o^ ELIAS GONZALEZ. [RUBRICA.]
LORENZO SORTILLON. [RUBRICA.]
JOSE DE CABALLERO. [RUBRICA.]

306 Por ANT^o^ CAMPOY Y MAURICIO NEIRA,
FRANCISCO GAUNA. [RUBRICA.]
Por ANDRES MONTOYA Y POR MI,
PABLO ELIAS. [RUBRICA.]

Asist: RAMON ROMERO.
Asist: FRANC^o^ GAUNA. [RÚBRICAS.]

En el parage en que mandé poner la segunda mohonera nombrado el valle de San Ignacio de Bavocómari, y acompañado del interesado, perito agrimensor, oficiales nombrados, para continuar la medida por el mismo

rumbo, y á los veinte y un dias del mismo mes y año, hice reconocer de nuevo la cuerda de á cincuenta varas usuales, y reconocida que fue se amarraron sus extremos en dos astas y tendida la cuerda se midieron y contaron por el mismo rumbo doscientos cuarenta y tres cordeles que remataron encima de una loma que da vista al viento sur surueste en donde se suspendió la medida por lo fragoso de la tierra muchas y profundas cañadas que se presentaban por el rumbo de esta medida, por lo que de necesidad por mi y por el perito agrimensor hacer la regulacion de cincuenta y siete cordeles mas, para el completo del costado de tres sitios para ganado mayor terminando esta regulacion en el ojo de la agua caliente frentero de la Sierra de Santa Rita al pie de una loma pelona en donde mandé poner mohonera esquina que da vista á la falda de la expresada sierra y enunciado ojo de la agua caliente y desde dicho
307 punto, por seguir la fragosidad del terreno y profundas cañadas das para dar la cabecera de estos sitios por mi y por el perito agrimensor á escuadra de la medida ya expresada por el viento referido, regulamos por el viento Norueste cuarto al Nornorueste para Sueste cuarto al Sursurueste sesenta cordeleshasta el pie de un alamito que queda en un pequeño valle al pie de la enunciada sierra de Santa Rita y para el completo de la cabecera ó cuadra por el viento opuesto Sursurueste cuarto al Sueste para el Nornorueste cuarto al Noroeste se regularon los otros cuarenta cordeles que terminaron en una loma que tenia varios encinos en donde mandé que se pusieran las correspondientes mohoneras, con lo que con estos tres sitios para ganado mayor y el medido del dia anterior se completaron cuatro sitios; y por ser mas del medio dia, mandé nos retirasemos para la mohonera del centro como en efecto habiendo llegado á la expresada la mohonera del frente de la cienega de San Ignacio del Bavocómari, hecho reconocer de nuevo la cuerda de cinquenta varas y amarrados sus extremos á las expresadas dos astas tendida la cuerda por el rumbo Ueste Sueste para Este Norueste se midieron y contaron setenta y cuatro cordeles que terminaron encima de unas lomas con immediacion á la punta de la agua, en donde por ser ya noche se concluyó la medida de este dia retirandonos todos á descansar, lonque pongo por diligencia firmandolo con el interesado perito agrimensor, oficiales nombrados y testigos de asistencia de que doy fe.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RUBRICA.]
308 IGNO° ELIAS. [RUBRICA.]
JUAN NEPOMUCENO FELIX. [RUBRICA.]
LORENZO SORTILLON.
Por ANDRES MONTOYA Y POR MI.
PABLO ELIAS. [RUBRICA.]
Por ANTONIO CAMPOY Y MAURICIO NEIRA.
FRANC° GAUNA. [RUBRICA.]
IGN° ELIAS GONZALEZ. [RUBRICA.]
JOSE DE CABALLERO. [RUBRICA.]

Asist.: RAMON ROMERO.
Asist.: FRANCISCO GAUNA. [RÚBRICAS.]

En el referido puesto y á los veintidos dias del mismo mes y año, yo el juez comisionado, el interesado, perito agrimensor, y demas oficiales

nombrados, hecha reconocer, la cuerda de cincuenta varas y el rumbo del dia anterior, por este mismo rumbo tendida la cuerda, se midieron y contaron veintiseis cordeles para el completo de cien cordeles para el costado de un sitio de ganado mayor, y por el mismo rumbo, pasando la cuerda por encima de varias lomas y cañadas, se midieron y contaron trescientos cordeles pasando los ultimos por un valle con inmediacion á los tanques del ojo de agua y terminando estos arriba de los expresados tanques en una loma pedregoza, en donde mandé poner mohonera esquina con la que se completó el costado de los otros cuatro sitios para ganado mayor en donde puesto el agujon por el perito agrimensor, puesta la cuerda escuadra y formando con el rumbo anterior un angulo recto ó de noventa
309 grados, reconocida la cuerda y tendida por el rumbo Sursurueste, cuarto al Sueste para el Nornorueste, cuarto al Norueste, se midieron y contaron cuarenta cordeles correspondientes á los del anterior cabeceado de los otros cuatro sitios terminando estos encima de unas lomas pelonas en donde mandé poner mohonera esquina y volviendo al centro de la medida de esta cabecera por el rumbo opuesto, Nornorueste cuarto al Norueste para el Sursurueste cuarto al Sueste se midieron y contaron sesenta cordeles para el completo de los cien cordeles terminando estos en la cima de un cerro muy encumbrado con lo que se concluyó la medida efectuandose el total de los ocho sitios para ganado mayor registrados por el C° Ignacio Elias y su hermana Dona Eulalia, y dandose por recibido quedó conforme con las expresadas medidas advertido que oportunamente señalará sus linderos con mohoneras de cal y canto segun está prevenido; y para constancia lo firmó conmigo y todos los que supieron con los de mi asistencia con quienes actuo por receptoria á falta de escribano segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RUBRICA.]
IGN° ELIAS. [RUBRICA.]
LORENZO ZORTILLON. [RUBRICA.]
Por ANDRES MONTOYA Y POR MI.
PABLO ELIAS. [RUBRICA.]
JUAN NEPOMUCENO FELIX.
Por ANT° CAMPOY Y MAURICIO NEIRA.
FRANC° GAUNA. [RUBRICA.]

310 IGN° ELIAS GONZALEZ. [RUBRICA.]
JOSE DE CABALLERO. [RUBRICA.]

Asist.: RAMON ROMERO,
Asista.: FRANC° GUANA. [RUBRICA.]

En la hacienda de San Pedro y á los veinticuatro dias del mes de Octubre de mil ochocientos veintiocho, yo el juez comisionado para proceder al aprecio y avaluo de los terrenos mensurados á favor del citado C° Ignacio Elias y su hermana Doña Eulalia, compuestos entre ambos de ocho sitios para ganado mayor, tuve á bien nombrar para tales avaluadores por constarme tener los conocimientos necesarios á los C. C. Pablo Elias y Ramon Romero, vecinos del presidio de Santa Cruz quienes se hallaron presentes á la medida y hecholes saber dicho nombramiento lo aceptaron y juraron en la forma que á cada uno corresponde, prometiendo hacer el avaluo sin dolo, fraude ni encubierta alhuna y en esta virtud dijeron de conformidad y segun el reconocimiento que tienon hecho é impuestos en las ordenes que rigen sobre la materia, el que debe darseles

y les dan el valor de sesenta pesos á cada uno de los seis sitios de ganado mayor por tener agua permanente y á los otros dos restantes para el completo de los ocho sitios de ganado mayor, el de diez pesos cada uno por carecer en lo absoluto de agua con lo que suma el total de los ocho sitios para ganado mayor el valor de trescientos ochenta pesos, y habiendoles leido á los avaluadores esta declaracion la ratificaron y firmaron
311 conmigo y los de mi asistencia con quienes actuo por receptoria segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]
PABLO ELIAS. [RUBRICA.]
RAMON ROMERO. [RUBRICA.]

Asist.: RAMON ROMERO,
Asist.: FRANCº GAUNA. [RUBRICA.]

En el presidio de Santa Cruz, á los veintinueve dias del expresado mes y año, yo el juez comisionado, habiendo regresada á este Presidio y en vista de las antecedentes diligencias y avaluo de las tierras mercenadas al Cº Ignacio Elias y su hermana Doña Eulalia, compuestos de ocho sitios para cria de ganado mayor y menor, mandé se saquen al pregon por treinta dias consecutivos contados desde el dia de mañana segun se previene por la ley. Asi lo proveyó y firmó el Sr. Juez comisionado con los testigos de asistencia de que doy fe.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

Asista.: RAMON ROMERO. [RUBRICA.]
Asist.: FRANCº GAUNA. [RUBRICA.]

1r Pregon.—En el mismo puesto, y á los treinta dias del mes de Octubre del referido año, yo el enunciado juez del mismo Presidio, hice
312 que á son de caja se convocasen en la plaza publica del citado Presidio varios individuos y que en presencia de todos ellos dijese el pregonero Gregorio Gallegos en altas y claras voces. Las tierras del Parage nombrado San Ignacio del Bavocómari sitas en esta jurisdiccion y comprensivas para ocho sitios de cria de ganado mayor y menor á favor del Cº Ignacio Elias y su hermana Doña Eulalia, avaluadas en la cantidad de trescientos ochenta pesos se venden de cuenta de la Nacion, quien quisiera hacer postura se le admitirá la que hiciere concurriendo ante mi. Y no habiendo resultado postor alguno se puso por diligencia que firmé con los de mi asistencia segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

Asist.: RAMON ROMERO. [RUBRICA.]
Asist.: FRANCº GAUNA. [RUBRICA.]

2º. Pregon: En el mismo Presidio á los treinta y un dias del citado año y mes, se dio otro pregon igual en todo al anterior y no habiendose presentado postor le puse por diligencia que firmo con los de asistencia, segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

Asista.: RAMON ROMERO. [RUBRICA.]
Asista.: FRANCº GAUNA. [RUBRICA.]

3°. Pregon: En el expresado presidio á primero de Noviembre de mil ochocientos veintiocho se dió otro pregon, y no habiendose
313 presentado postores se puso por diligencia que firme con los de asistencia segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

Asista.: RAMON ROMERO. [RUBRICA.]
Asista.: FRANCº GAUNA. [RUBRICA.]

4°. Pregon: En el citado Presidio A á los dos dias del mes y año citados, se dió otro pregon, y no comapreciendo postor se puso esta diligencia que firmé con los de mi asistencia segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

Asistencia: RAMON ROMERO. [RUBRICA.]
Asistencia: FRANCº GAUNA. [RUBRICA.]

5°. Pregon: En el citado presidio á los tres dias del relacionado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de asistencia segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

Asist.: RAMON ROMERO. [RUBRICA.]
Asist.: FRANCº GAUNA. [RUBRICA.]

6°. Pregon: En el referido presidio á los cuatro dias del expressado mes y año se dió otro pregon y no habiendo ocurrido postor puse
314 esta diligencia que firmé con los de asistencia.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO. [RUBRICA.]
A.: FRANCº GAUNA. [RUBRICA.]

7°. Pregon: En el mismo Presidio á los cinco dias del mencionado mes y año, se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de mi asistencia.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO. [RUBRICA.]
A.: FRANCº GAUNA. [RUBRICA.]

8°. Pregon: En el citado Presidio á los seis dias del citado mes y año se dió otro pregon y no ahbiendo comparecido postor, se puso por diligencia que firmé con los de a'istencia segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO. [RUBRICA.]
A.: FRANCº GAUNA. [RUBRICA.]

9°. Pregon: En el mencionado Presidio á los sieste dias del mismo mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de asistencia.

315 Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO. [RÚBRICA.]
A.: FRANCº GAUNA. [RÚBRICA.]

10° Pregon: En el relacionado Presidio á los ocho dias del mes y año corriente se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO. [RÚBRICA.]
A.: FRANCº GAUNA. [RÚBRICA.]

11° Pregon: En el expresado Presidio á los nueve dias del mismo mes y año, se dió otro pregon y no habiendo comparecido postor se puso por diligencia que firmé con los de mi asistencia segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO. [RÚBRICA.]
A.: FRANCº GAUNA. [RÚBRICA.]

12° Pregon: En el citado presidio á los diez dias del citado mes y año, se dió otro pregon y no habiendo resultado postores se puso por diligencia que firmé con los de asistencia segun derecho.

316 Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO. [RÚBRICA.]
A.: FRANCº GAUNA. [RÚBRICA.]

13° Pregon: En el mismo Presidio á los once dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de assistencia segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO. [RÚBRICA.]
A.: FRANCº GAUNA. [RÚBRICA.]

14° Pregon: En el citado Presidio á los doce dias del mismo mes y año se dió otro pregon y no habiendo comparecido postor, se puso por diligencia que firmé con los testi gos de asistencia.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO. [RÚBRICA.]
A.: FRANCº GAUNA. [RÚBRICA.]

15° Pregon: En el expresado presidio á los trece dias del citado mes y año se dió otro pregon y no habiendo postor, se puso por diligencia que firmé con los de asistencia.

317 Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO. [RÚBRICA.]
A.: FRANCISCO GAUNA. [RÚBRICA.]

16° Pregon: En el citado Presidio á los catorce dias del citado mes y año se dió otro pregon y no habiendo resultado poster, se puso por diligencia que firmé con los de asistencia segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO.
A.: FRANCO GAUNA. [RÚBRICAS.]

17° Pregon: En el mismo Presidio á los quince dias del mismo mes y año, se dió otro pregon, y no habiendo ocurrido postor, se puso por diligencia que firmé con los de mi asistencia.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO.
A.: FRANCO GAUNA. [RUBRICAS.]

18° Pregon: En el relacionado Presidio á los diez y seis dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia.

318 Por ALEJANDRO FRANCO.
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCO GAUNA. [RUBRICAS.]

19° Pregon: En el citado Presidio á los diez y siete dias del citado mes y año se dió otro pregon, y no resultando postor se puso por diligencia que firmé con los de de asistencia.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCISCO GAUNA. [RUBRICAS.]

20° Pregon: En el mismo presidio á los diez y ocho dias del expresado mes y año se dió otro pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCISCO GAUNA. [RUBRICAS.]

21° Pregon: En el relacionado Presidio á los diez y nueve dias del

mismo mes y año se dió otro pregon, y no habiendo resultado
319 postor, se puso por diligencia que firmé con los de asistencia segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCº GAUNA. [RUBRICAS.]

22º Pregon: En el expresado Presidio á los veinte dias del expresado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firmo con los de asistencia segun derecho.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCISCO GAUNA. [RUBRICAS.]

23º Pregon: En el mencionado Presidio á los veinte y un dias del citado mes y año, se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de asistencia.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: R. MON ROMERO.
A.: FRANCISCO GAUNA. [RUBRICA.]

24º Pregon: En el mismo presidio á los veintidos dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de asistencia segun derecho.

320 Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCISCO GAUNA. [RUBRICAS.]

25º Pregon: En el expresado Presidio á los veintitres dias del mismo mes y año se dió otro pregon y no apareciendo postor se puso por diligencia que firmé con los de mi asistencia.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO,
A.: FRANCº GAUNA. [RUBRICAS.]

26º Pregon: En el relacionado Presidio á los veinticuatro dias del citado mes y año se dió otro pregon, y no resultando postor, se puso por diligencia que firmé con los de mi asistencia.

Por ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCISCO GAUNA. [RUBRICAS.]

27º Pregon: En el citado Presidio á los veinticinco dias del citado mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de mis asistencia.

Por ALEJANDRO FRANCO,
321 RAMON ROMERO. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCISCO GAUNA. [RUBRICAS.]

28° Pregon: En el mismo Presidio á los veintiseis dias del citado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de mi asistencia segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO.

A.: RAMON ROMERO.
A.: FRANCISCO GAUNA. [RÚBRICAS.]

29° Pregon: En el expresado Presidio á los veintiseiste dias del mismo mes y año se dió otro pregon y no resultando postor, se puso por diligencia que firmé con los de mi asistencia.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO.
A.: FRANCº GAUNA. [RUBRICAS.]

30° Pregon: En el mencionado Presidio á los veintiocho dias del expresado mes y año se dió el último pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de mi asistencia.

Por ALEJANDRO FRANCO.
322 RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO.
A.: FRANCº GAUNA. [RÚBRICAS.]

En el mismo Presidio, en dicho dia mes y año, estando concluido este expediente, remitase al Sr. Tesorero General, con citacion del interesado á fin de que trasladandose por si ó por apoderado á la Capital de Alamos asista á las tres almonedas de los terrenos pregonados que han de verificarse en la expresada Capital. Yo el juez comisionado asi lo decreté mandé y firmé con los de mi asistencia segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RÚBRICA.]

A.: RAMON ROMERO.
A.: FRANCO. GAUNA. [RUBRICAS.]

Incontinenti en dicho dia mes y año siendo presente el Cº Ignacio Elias por si y como apoderado de su hermana D. Eulalia le notifiqué é hice saber el decreto que antecede y dandose por citado lo firmó conmigo y los de mi asistencia con quienes actuo por receptoria segun derecho.

Por ALEJANDRO FRANCO.
RAMON ROMERO. [RUBRICA.]
323 IGNACIO ELIAS. [RUBRICA.]

A.: RAMON ROMERO.
A.: FRANCº GAUNA. [RUBRICAS.]

RAZON.—Se remitió este expediente con oficio fecha 30 de Noviembre de 1828 al Sr Tesorero Gral del Estado y para constancia lo rubriqué.

FRANCO. [RÚBRICA.]

ALAMOS, *19 de Diciembre de 1828.*

Pase al Promotor Fiscal de la Hacienda del Estado para que exponga su dictamen.

GAXIOLA. [UNA RUBRICA.]

C° Tesorero General:

Este expediente contiene la mensura de ocho sitios de tierra para la cria de ganado mayor y caballada practicada por el alcalde de Sta Cruz en los parages de San Ignacio del Bavocómari. Nada encuentro en contrario para que dejen de adjudicarse á los pretendientes si no es que exceder del número á que pueden concederse por el art° 21 del decreto de 20 de Mayo de 1825 empero si Vd está asegurado de los requisitos que expresa el 22, soy de opinion que se rematen en favor de los registrantes á menos que no aparesca otro mejor postor.

Alamos Diebre 20 de 1828.

Felipe Gil. [rubrica.]

324 Alamos, *22 de Diebre de 1828.*

Conformandome con el dictamen del Promotor Fiscal, que antecede, debia de mandar y mando se citen á los Sres vocales de la Junta de Almonedas para practicar las tres últimas y remate del terreno que expresa este expediente.

Gaxiola. [rubrica.]

1ª. Almoneda: En la ciudad Concepcion de Alamos á los veintidos dias del mes de Diciembre de mil ochocientos veintiocho, reunidos en junta de almoneda el Sr Presidente y vocales que la componen con el objeto de celebrar la primera de los terrenos á que se contrae este expediente dispusieron que á son de tambor se convocasen algunos ciudadanos en el oficio de esta Tesoreria y que en su presencia procediese el que funcionó de pregonero Marcelo Parra, á dar un pregon como efectivamente lo dió en altas y claras voces diciendo: "Van á rematarse las tierras del parage nombrado San Ignacio de Bavocómari sitas en jurisdiccion del Presidio de Santa Cruz comprensiva de ocho sitios para cria de ganado mayor y caballada y ganado menor, mensuradas á favor de Don Ignacio y Doña Eulalia Elias y avaluadas en trescientos ochenta pesos: quien quisiera hacer mejor postura, ocurra ante esta junta donde se le admitirá la que haga. Y no habiendo ocurrido persona alguna se pone por diligencia para constancia.

Gaxiola. [rubrica.]
Almada. [rubrica.]
Gil. [rubrica.]

325 2ª. Almoneda: En le expresada ciudad á los veintitres dias del mes de Diebre de mil ochocientos veintiocho, convocados en junta los Sres Presidente y vocales que la componen con el fin de celebrar la segunda almoneda de los terrenos que expresa este expediente mandaron se practicase en los mismos terminos que la primera antecedente, lo que se verificó añadiendo unicamente el que hizo veces de pregonero que el dia de mañana habia de quedar celebrado el remate. Y no habiendo resultado postor se pone por diligencia para constancia que firmaron los Sres de la junta.

Gaxiola. [rubrica.]
Almada. [rubrica.]
Gil. [rubrica.]

3ª. Almoneda: En la nominada ciudad de la Concepcion á los veinticuatro dias del mismo mes y año hallandose reunidos el Sr Presidente y vocales de la expresada junta de almonedas, dispusieron se evacuase la tercera y remate de los terrenos que menciona este expediente lo cual se hizo en la misma conformidad que las dos anteriores, con solo añadir el pregonero que en este monfento ha de quedar celebrado el remate. Y habiendo dado la plegaria de las doce de este dia sin que ocurriese postor alguno, dijo por último el pregonero en alva voz: "á la una, á las dos, á las tres: que se remata, que se remata, que se remata: que buena, que buena, que buena pro les haga á Don Ignacio y Doña Eulalia Elias."

En tales terminos se concluyó este acto quedando pública y solemnemente rematado á favor de dichos interesados los ocho sitios de
326 tierra para cria de ganado mayor y caballada en el parage nombrado San Ignacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, en la cantidad de trescientos ochenta pesos en que fueron avaluados. Y para la debida constancia se pone esta diligencia que firmaron los Sres Presidente y vocales de la junta con el Cº Capitan Ignacio Elias como apoderado de los interesados.

GAXIOLA. [RUBRICA.]
ALMADA. [RUBRICA.]
GIL. [RUBRICA.]
IGNACIO ELIAS GONZALEZ. [RUBRICA.]

ARIZPE, *19 de Octubre de 1832.*

Habiendose verificado el entero de trescientos ochenta pesos en la Tesoreria General del Estado Unido, en que se remataron los ocho sitios de tierras comprendidos en el puesto nombrado San Ignacio del Bavocómari á favor del Cº Ignacio Elias y Doña Eulalia Elias vecinos el primero de la villa de Rayon y la segunda de esta Capital, como lo comprueba la certificacion que está agrogada al expediente, expidase el titulo de merced en forma para su resguardo. El Tesorero Gral del Estado de Sonora asi lo proveyó y firmó con testigos de asistencia segun derecho.

MENDOZA. [RUBRICA.]

A.: MARIANO ROMO. [RUBRICA.]
A.: LUIS CARRANCO. [RUBRICA.]

327 En 25 de Diciembre de 1832 se expidió titulo de merced del terreno del Bavocómari de que trata este expediente.

MENDOZA. [RÚBRICA.]

Nicolas Maria Gaxiola, Tesorero Gral de las Rentas del Estado de Occidente, certifico: que al folio 3 vuelta del manual de esta Tesoreria, del corriente año, se halla sentada con esta fecha la partida siguiente: Cargo en mercedes de tierra trescientos ochenta pesos que enteró el Capitan Don Ignacio Elias á nombre de Don Ignacio y Doña Eulalia Elias vecinos de Arizpe, por la merced de ocho sitios de tierra para cria de ganado mayor y caballada en el parage nombrado San Ignacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, avaluados en la indicada cantidad, que se remataron á su favor sin opositor alguno en junta de almonedas celebrada en esta Tesoreria el dia 24 de Diciembre próximo pasado, $380.00.

GAXIOLA. [RÚBRICA.]
IGNACIO ELIAS GONZALEZ. [RÚBRICA.]

Y para que conste doy la presente en Alamos á ocho de Enero de mil ochocientos veintinueve años.

NICOLAS MARIA GAXIOLA. [RÚBRICA.]

328 Testado—C— no vale— E. L. expresado—Lorenzo Sortillon—Juan Nepomuceno Felix—vale.

Es copia exacta de su original que autorizo y firmo en Hermosillo á ocho de Febrero de mil ochocientos noventa y ocho.

V. AGUILAR. [RÚBRICA.]

329 TRANSLATION OF EXHIBIT A.

Copy of the expediente and proceedings had in the survey of eight sitios for raising large stock and horses in places called "San Ignacio del Babocomari," in behalf of Citizen Ignacio Elias and Doña Eulalia Elias.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims, May 9, 1899. Jas. H. Reeder, clerk; R. L. Long, deputy.

330 A fifty-cent stamp duly canceled.

Citizen TREASURER GENERAL:

I, Ignacio Bonillas, a resident of Nogales, and by chance in this capital, appear before you and state: That as appears from the letter, the original of which I forward herewith, Mr. Robert Perrin, owner of the land known as "San Ignacio del Babocomari," situate in the Territory of Arizona, United States of the North, needs a certified copy of the expediente relating to said land, which exists in the archives of the Treasury under your worthy charge, and said Mr. Perrin having authorized me to solicit said copy in his name I pray you to be pleased to direct that the corresponding exemplification be issued to me for the uses that may be convenient to the party in interest.

Hermosillo, February 5, 1898.

IGNACIO BONILLAS.

Received on the seventh instant, and, as requested, let the copy asked for be issued.

V. AGUILAR. [RUBRIC.]

Stamp 3rd. 2 reals. Years of 1822 and 1823.

Habilitated, the constitution having been sworn to by the King on March 9, 1820. Habilitated by the State of the Occident for the years 1827 and 28. A stamp which reads: "Habilitated by the Republic of Mexico for the years 1824 and 25."

Mr. TREASURER-GENERAL:

331 Don Ignacio Elias and Doña Eulalia Elias present themselves before you in due form and state: That, being in need of land for live stock (bienes de campo) they, in company with Don Rafael Elias, Captain Ignacio Elias, and Don Nepomuceno Felix, denounce the vacant land which confines with the ranch of San Pedro, in the jurisdiction of

Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay the nation the corresponding dues together with whatever else that may be just, until we acquire title to the grant and confirmation, for which purpose you will be pleased to consider said vacant land as registered and denounced; wherefore we pray you to be pleased to provide as we request, by which we shall receive favor.

Arizpe, March 12, 1827.

By consent and request of Don Ignacio Elias.

JOAQUIN ELIAS. [RUBRIC.]
EULALIA ELIAS. [RUBRIC.]

COSALA, *July 1, 1898.*

The police magistrate of Santa Cruz, with authority which is conferred on him therefor, without prejudice to a third party who may represent a better right, and after citation of the coterminous owners, will proceed to the survey, appraisement, and publications for thirty consecutive days of the lands the foregoing denouncement designates, subjecting himself fully to the sovereign decree of the Honorable Constituent Congress of the State, No. 30, of May 20, 1825, and to the regulations that accompany it, and, after said proceedings are executed, he will
332 forward them to this office of treasurer, citing the bidders that may result to be present, in person or by attorneys, at the final sale that is to be held in said office, after the three customary public offers. The treasurer-general of the State, Nicolas Maria Gaxiola, so decreed and signed it.

GAXIOLA. [RUBRIC.]

At the presidio of Santa Cruz, and on the fifth day of the month of October, one thousand eight hundred and twenty-eight, in view of the foregoing decree of the treasurer-general, comply with what is ordered in said decree dated July 1, 1827; and to that end, after citation of the parties in interest, coterminous owners, expert surveyor, and other necessary assistants who shall be appointed, let me go to the hacienda of San Pedro, to the end that the survey of the sitios the parties in interest desire may be proceeded with.

Citizen Alejandro Franco, the constitutional magistrate (alcalde) of the presidio of Santa Cruz, by this order so determined and signed it, with attending witnesses with whom he acts ex officio in default of a notary, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA.

333 At the hacienda of San Pedro, and on the eighteenth day of the month of October, one thousand eight hundred and twenty-eight, I, the said judge, Citizen Ignacio Elias being present for himself and as the attorney of his sister, Doña Eulalia; the coterminous owners,

Captain Ignacio Elias and Nepomuceno Felix; the expert surveyor, Lieutenant-Colonel of Engineers Citizen Jose Maria Caballero, to whom I gave notice of and made known the foregoing order, which they understood and, accepting citation and the appointments, the twentieth day of said month was designated for going to make the survey, which they signed with me and those in my attendance in the ordinary form.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
IGNACIO ELIAS. [RUBRIC.]
JUAN NEPOMUCENO FELIX. [RUBRIC.]
JOSE DE CABALLERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

Having arrived at the place called San Ignacio de Babocomari the twentieth day of said month and year, as the place at which terminate the measurements of Citizens Ignacio Elias Gonzalez and Nepomuceno Felix, in the direction east northwest to west southwest, accompanied by the party in interest, the expert surveyor, the assistants who
334 are to be appointed, and attending witnesses, I ordered that before commencing the survey an inspection or ocular examination be made of the lands that are going to be surveyed on petition of Citizen Ignacio Elias and his principal, Doña Eulalia, and, after being well examined, I found them to be ample places for raising large and small stock, the greater part of them with water flowing from permanent springs, with the sole disadvantage of being very dangerous with hiding places of the hostile Apache. And in witness thereof I enter it as a minute, which I signed with those in my attendance, with whom I act.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
IGNACIO ELIAS. [RUBRIC.]
JUAN NEPOMUCENO FELIX. [RUBRIC.]
IGNACIO ELIAS GONZALEZ. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

On said day, month, and year I, the judge commissioned for the purpose of proceeding to the survey of the land denounced, on a bald hillock (loma pelona) in front of the small marsh (Cienegnita) of San Ignacio de Babocomari, appointed Citizen Lorenzo Sortillon as tallyman, Citizens Andres Mendoza and Pablo Elias as Chainmen, and Citizens Antonio Campoy and Mauricio Neiro as recorders, and together with the
335 expert surveyor, Citizen Lieutenant-Colonel Jose Maria Caballero, they accepted said duties, each one for himself and in the proper form taking the customary oath to faithfully and lawfully discharge the duties that correspond to each one, without deception or fraud, and to work each one according to his best intelligence and understanding, and

those who knew how signed it with me and those in my attendance in the ordinary form, to which I certify.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
LORENZO SORTILLON. [RUBRIC.]
PABLO ELIAS. [RUBRIC.]
For ANDRES MONTOYA, X, for ANTONIO CAMPOY and MAURICIO NEIRO,
FRANCISCO GAUNA. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRIC.]

At said place and said day, month, and year, in order to proceed to the survey, the parties in interest, the assistants appointed, and attending witnesses being present, I ordered that a cord of fifty varas be measured, and its extremities being tied to two poles, said survey was proceeded with by the expert surveyor, Citizen Jose M. Caballero, who, setting up the compass, took the direction (viento, wind) east northwest
336 quarter east to west southwest quarter west, where I had a cross monument placed, and from said place through said point there were measured and counted one hundred cords, which terminated in a small valley in the vicinity of some bald hillocks (lomas peloñas), where I had a monument placed, and as it was now late, I had the cord gathered up and the assistants and others to retire to rest until the following day to continue the survey, which I enter as a minute, and I sign it with those in my attendance and other parties in interest who were accompanying me, to which I certify.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
IGNACIO ELIAS. [RUBRIC.]
JUAN NEPOMUCENO FELIX. [RUBRIC.]
IGNACIO ELIAS GONZALEZ. [RUBRIC.]
LORENZO SORTILLON. [RUBRIC.]
JOSE DE CABALLERO. [RUBRIC.]
For ANTONIO CAMPOY and MAURICIO NEIRO,
FRANCISCO GAUNA. [RUBRIC.]
For ANDRES MONTOYA and for myself,
PABLO ELIAS. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRIC.]

At the place where I ordered the second monument put, called the valley of San Ignacio de Babocomari, and accompanied by the party in interest, expert surveyor, assistants appointed, to continue the survey
337 in the same direction, and on the twenty-first day of said month and year, I had the cord of fifty usual varas again examined, and after it was examined, its extremities were tied to two poles and the cord being extended there were measured and counted, in said direction, two hundred and forty-three cords, which terminated on top of a hillock (loma) which looks in the direction (viento, wind) south southwest, where the survey was suspended on account of the roughness of the

ground, the many and deep ravines that appeared in the direction of this measurement, wherefore it was necessary for me and the expert surveyor to make an estimate of fifty-seven cords more for the completion of the side of three sitios for large stock, this estimate terminating at the hot spring in front of the Santa Rita Mountains, at the foot of a bald hillock (loma pelona), where I ordered placed a corner monument which looks toward the foot of said mountain and said hot spring and from said point because the roughness of the ground and the deep ravines continue, in order to form the end line of these sitios perpendicular to the measurement already described in said direction, I myself and the expert surveyor estimated in the direction (viento, wind) northwest quarter north northwest to southeast quarter south southwest sixty cords to the foot of a small cottonwood tree, which stands in a small valley at the foot of said Santa Rita Mountains, and for the completion of the end or perpendicular line in the opposite direction (viento, wind) south southwest quarter southeast to north northwest quarter northwest, the other forty cords were
338 estimated and ended on a hillock (loma) where there were several oaks, where I ordered that the corresponding monuments be put, with which, together with the three other sitios for large stock, and the one measured the day before, four sitios were completed, and as it was more than midday, I ordered that we withdraw to the monument at the center, and, in fact, having arrived at said monument in front of the Marsh of San Ignacio del Babocomari, having again examined the cord of fifty varas and tied its extremities to said two poles, the cord being stretched in the direction west southeast to east northwest, there were measured and counted seventy-four cords, which terminated on top of some hillocks (lomas) in the vicinity of the end of the water, where, as it was now night, the measurement was concluded for this day, all of us retiring to rest, which I enter as a minute, signing it with the party in interest, the expert surveyor, assistants appointed, and attending witness to which I certify.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
IGNACIO ELIAS. [RUBRIC.]
JUAN NEPOMUCENO FELIX. [RUBRIC.]
LORENZO SORTILLON. [RUBRIC.]
For ANDRES MONTOYA and for myself,
PABLO ELIAS. [RUBRIC.]
For ANTONIO CAMPOY and MAURICIO NEIRO,
FRANCISCO GAUNA. [RUBRIC.]
IGNACIO ELIAS GONZALES. [RUBRIC.]
339 JOSE DE CABALLERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

At said place, and on the twenty-second day of said month and year, I, said commissioned judge, the party in interest, expert surveyor, and other appointed assistants, having had the cord of fifty varas and the direction of the preceding day examined, the cord being extended in this same direction, there were measured and counted twenty-six cords for the completion of one hundred cords for the side of one sitio for large

, and in the same direction, the cord passing over the tops of vari-illocks (lomas) and ravines, there were measured and counted three red cords, the last ones passing through a valley in the vicinity of ools of the spring and terminating above said pools on a rocky hil- loma), where I ordered a corner monument placed, with which was leted the side of the other four sitios for large stock, where, the ass being set up by the expert surveyor, the cord placed perpen- ar and forming with the preceding course a right angle or angle of y degrees, the cord being examined and stretched in the direction southwest quarter southeast to north northwest quarter northwest, were measured and counted forty cords corresponding to those of receding end line of the other four sitios, terminating on top of some bald hillocks (lomas pelonas) where I ordered a corner monument placed, and returning to the center of the measurement of this end line, in the opposite direction, north northwest quarter north- to south southwest quarter southeast there were measured and ed sixty cords for the completion of the hundred cords terminating p of a very high hill (cerro), with which the measurement was con- l, making a total of eight sitios for large stock registered by Citizen io Elias and his sister, Doña Eulalia, and, being satisfied with the aid measurements, he accepted them, being cautioned that he shall, proper time, mark his boundaries with monuments of lime and as is provided, and in witness thereof he signed it with me and all who know how, with those in my attendance with whom I act ex in default of a notary, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
IGNACIO ELIAS. [RUBRIC.]
LORENZO SORTILLON. [RUBRIC.]
For ANDRES MONTOYA and for myself,
PABLO ELIAS. [RUBRIC.]
JUAN NEPOMUCENO FELIX. [RUBRIC.]
For ANTONIO CAMPOY and MAURICIO NEIRO,
FRANCISCO GAUNA. [RUBRIC.]
IGNACIO ELIAS GONZALEZ. [RUBRIC.]
JOSE DE CABALLERO. [RUBRIC.]

tendance: RAMON ROMERO.
tendance: FRANCISCO GAUNA. [RUBRIC.]

At the hacienda of San Pedro and on the twenty-fourth day of the month of October, one thousand eight hundred and twenty-I, the judge commissioned, in order to proceed to the appraisement aluation of the lands surveyed in behalf of said Citizen Ignacio Elias, is sister, Doña Eulalia, comprising, between both of them, eight for large stock, saw fit to appoint as such appraisers, because I was that they had the necessary information, Citizens Pablo Elias and n Romero, residents of the presidio of Santa Cruz, who were pres- the survey, and said appointment being made known to them, they ted it and took the oath, in the form corresponding to each one, ising to make the valuation without any deception, fraud, or collu- and in virtue thereof they said, in common accord and conformably

to the examination they had made and being conversant with the orders that govern in the matter, that there should be given them and they give them the value of sixty dollars to each one of six sitios for large stock, as they have permanent water, and to the remaining two the value of ten dollars each, because they are absolutely without water, with which the total of eight sitios for large stock reaches the value of three hundred and eighty dollars; and having read this statement to the appraisers, they ratified it and signed with me and those in my attendance with whom I act ex officio according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
342 PABLO ELIAS. [RUBRIC.]
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRIC.]

At the presidio of Santa Cruz, on the twenty-ninth day of said month and year, I, the judge commissioned, having returned to this presidio, and in view of the foregoing proceedings and appraisement of the lands set apart to Citizen Ignacio Elias and his sister, Doña Eulalia, composed of eight sitios for raising large and small stock, I ordered that they be published for thirty consecutive days, counted from to-morrow, as is provided by the law. The judge commissioned so provided and signed it, with attending witnesses, to which I certify.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

1st publication: At said place and on the thirtieth day of the month of October of said year, I, the said judge of said presidio, caused various individuals to be assembled at the sound of the drum in the public square of said presidio, and the public crier, Gregorio Gallegos, to proclaim, in the presence of all of them, in a loud and clear voice:

343 "The lands at the place called San Ignacio del Babocomari, situate in this jurisdiction and comprising eight sitios for raising large and small stock, in behalf of Citizen Ignacio Elias and his sister, Doña Eulalia, appraised in the sum of three hundred and eighty dollars, are being sold on account of the nation; whoever desires to make a bid shall have the bid he makes admitted by applying to me." And no bidder having resulted, it was entered as a minute which I signed with those in my attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

2d publication: At said presidio, on the thirty-first day of said month and year, another publication was made equal in all respects to the fore-

going; and no bidder having appeared, I entered it as a minute, which I sign with those in my attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

3d publication: At said presidio, on the first of November, one thousand eight hundred and twenty-eight, another publication was made; and no bidders having appeared, it was entered as a minute, which I
344 signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GUANA. [RUBRIC.]

4th publication: At said presidio, on the second day of said month and year, another publication was made; and no bidder appearing, this minute was entered, which I signed with those in my attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GUANA. [RUBRIC.]

5th publication: At said presidio, on the third day of said month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GUANO. [RUBRIC.]

6th publication: At said presidio, on the fourth day of said month and year, another publication was made; and no bidder having appeared,
345 I entered this minute, which I signed with those in attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GUANA. [RUBRIC.]

7th publication: At said presidio, on the fifth day of said month and year, another publication was made; and there being no bidder, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GUANA. [RUBRIC.]

8th publication: At said presidio, on the sixth day of said month and year, another publication was made; and no bidder having appeared, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GUANA. [RUBRIC.]

9th publication: At said presidio, on the seventh day of said
346 month and year, another publication was made; and no bidder having appeared, it was entered as a minute, which I signed with those in attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

10th publication: At said presidio, on the eighth day of the current month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in my attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

11th publication: At said presidio, on the ninth day of said month and year, another publication was made; and no bidder having appeared, it was entered as a minute, which I signed with those in my attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

347 12th publication: At said presidio, on the tenth day of said month and year, another publication was made; and no bidders having resulted, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

13th publication: At said presidio, on the eleventh day of said month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

14th publication: At said presidio, on the twelfth day of said month and year, another publication was made; and no bidder having appeared, it was entered as a minute, which I signed with those in attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

348 15th publication: At said presidio, on the thirteenth day of said month and year, another publication was made; and there being no bidder, it was entered as a minute, which I signed with those in attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO. [RUBRIC.]
Attendance: FRANCISCO GAUNA. [RUBRIC.]

16th publication: At said presidio, on the fourteenth day of said month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

17th publication: At said presidio, on the fifteenth day of said month and year, another publication was made; and no bidder having appeared, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

349 18th publication: At said presidio, on the sixteenth day of said month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

19th publication: At said presidio, on the seventeenth day of said month and year, another publication was made; and no bidder resulting, it was entered as a minute, which I signed with those in attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRICS.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

20th publication: At said presidio, on the eighteenth day of said month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

350 21st publication: At said presidio, on the nineteenth day of said month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

22d publication: At said presidio, on the twentieth day of said month and year, another publication was made; and there being no bidder, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

23d publication: At said presidio, on the twenty-first day of said month and year, another publication was made; and there being no bidder, it was entered as a minute, which I signed with those in attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRIC.]

351 24th publication: At said presidio, on the twenty-second day of said month and year, another publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

25th publication: At said presidio, on the twenty-third day of said month and year, another publication was made; and no bidder appearing, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

26th publication: At said presidio, on the twenty-fourth day of said month and year, another publication was made; and no bidder resulting, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

352 27th publication: At said presidio, on the twenty-fifth day of said month and year, another publication was made; and no bidder having appeared, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

28th publication: At said presidio, on the twenty-sixth day of said month and year, another publication was made; and there being no bidder, it was entered as a minute, which I signed with those in my attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

29th publication: At said presidio, on the twenty-seventh day of said month and year, another publication was made; and no bidder resulting, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

353 30th publication: At said presidio, on the twenty-eighth day of said month and year, the last publication was made; and no bidder having resulted, it was entered as a minute, which I signed with those in my attendance.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

At said presidio, on said day, month, and year, this expediente being concluded, forward it to the treasurer-general, with citation to the party in interest to proceed, in person or by attorney, to the capital at Alamos, to be present at the three public offers of sale of the lands advertised, which are to be held at said capital. I, the judge commissioned, so ordered, decreed, and signed it with those in my attendance, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

Thereupon, on said day, month, and year, citizen Ignacio Elias being present for himself and as attorney for his sister, Doña Eulalia, I gave notice of and made known to him the foregoing decree; and, accepting citation, he signed it with me and those in my attendance, with
354 whom I act, ex officio, according to law.

For ALEJANDRO FRANCO,
RAMON ROMERO. [RUBRIC.]
IGNACIO ELIAS. [RUBRIC.]

Attendance: RAMON ROMERO.
Attendance: FRANCISCO GAUNA. [RUBRICS.]

NOTE.—This expediente was forwarded, with an official communication dated November 30, 1828, to the treasury-general of the State, and in witness thereof I attached my rubric to it.

FRANCO. [RUBRIC.]

ALAMOS, *December 19, 1828.*

Refer it to the fiscal attorney of the treasury of the State that he may give his opinion.

GAXIOLA. [RUBRIC.]

Citizen TREASURER-GENERAL:

This expediente contains the survey of eight sitios of land, for raising large stock and horses, made by the magistrate (alcalde) of Santa Cruz, at the places of San Ignacio del Babocomari. I find no reason why they should not be adjudicated to the applicants, unless they exceed the number that can be granted under article 21 of the decree of May 20, 1825; but if you are satisfied as to the requirements prescribed in article 22, I am of opinion that they may be sold to the applicants, unless a higher bidder appears.
355 Alamos, December 20, 1828.

FELIPE GIL. [RUBRIC.]

ALAMOS, *December 22, 1828.*

Concurring in the opinion of the fiscal attorney, which precedes, it is my duty to order, and I do order, that the members of the board of sales be summoned for the purpose of holding the last three offers of sale and final sale of the land described in the expediente.

GAXIOLA. [RUBRIC.]

1st offer of sale: In the city of Conception of Alamos, on the twenty-second day of the month of December, one thousand eight hundred and twenty-eight, the president and members that compose it being assembled as a board of sales for the purpose of making the first offer of the lands to which this expediente refers, they directed that some of the citizens be called together in the office of this treasury at the sound of the drum, and that in their presence Marcelo Parra, who acted as public crier, proceed to make a publication, as in fact he did, saying in a loud and clear voice:

"There are going to be sold the lands at the place called San Ignacio del Babocomari, situated in this jurisdiction of the presidio of Santa

Cruz, comprising eight sitios for raising large stock and horses
356 and small stock, surveyed for Don Ignacio and Doña Eulalia Elias and appraised at three hundred and eighty dollars. Whoever wishes to make a higher bid let him apply to this board, where the bid he makes will be admitted." And no person having applied, it is entered as a minute in witness thereof.

GAXIOLA. [RUBRIC.]
ALMADA. [RUBRIC.]
GIL. [RUBRIC.]

2d offer of sale: In said city, on the twenty-third day of the month of December, one thousand eight hundred and twenty-eight, the president and members composing the board having assembled for the purpose of making the second offer of the lands described in this expediente, they ordered that it be made in the same terms as the first preceding, which was done, he who acted as public crier adding only that the final sale must be made to-morrow. And no bidder having resulted it is entered as a minute in witness thereof, which the members of the board signed.

GAXIOLA. [RUBRIC.]
ALMADA. [RUBRIC.]
GIL. [RUBRIC]

3rd offer of sale: In said city of Conception, on the twenty-fourth day of said month and year, the president and members of said board of sales being assembled, they directed that the third offer and final
357 sale of the lands described in this expediente be made, which was done in the same manner as the two preceding, the public crier merely adding that at this moment the final sale has to be made. And the hour for midday prayer for this day having sounded and no bidder having appeared, the public crier said, for the last time, in a loud voice: "Once, twice, three times; sold, sold, sold; may it do good, good, good to Don Ignacio and Doña Eulalia Elias."

In these terms this act was concluded, the eight sitios of land for raising large stock and horses at the place called San Ignacio del Babocomari, jurisdiction of the presidio of Santa Cruz, being publicly and solemnly sold to said parties in interest for the sum of three hundred and eighty dollars, at which they were appraised. And in due witness whereof this minute is entered, which the president and members of the board signed, with Captain Ignacio Elias as attorney for the parties in interest.

GAXIOLA. [RUBRIC.]
ALMADA. [RUBRIC.]
GIL. [RUBRIC.]
IGNACIO ELIAS GONZALES. [RUBRIC.]

ARIZPE, *October 19, 1832.*

Payment of three hundred and eighty dollars, for which was sold the eight sitios of land comprised in the place called San Ignacio del Babocomari to Citizen Ignacio Elias and Doña Eulalia Elias, the first
358 a resident of the town of Rayon and the second of this capital, having been paid into this treasury-general, as shown by the certificate aggregated to the expediente, let formal title to the grant be issued

for their security. The treasurer-general of the State of Sonora so ordered and signed it with attending witnesses, according to law.

MENDOZA. [RUBRIC.]

Attending witness:
MARIANO ROMO. [RUBRIC.]
Attending witness:
LUIS CARRANCO. [RUBRIC.]

On December 28, 1832, title was issued for the grant of land at Babocomari to which this expediente refers.

I, Nicolas Maria Gaxiola, treasurer-general of the revenues of the State of the Occident, certify:

That on the reverse side of leaf 3 of the manual of this treasury for the current year there is entered under this date the following entry:

Receipt for grants of lands, three hundred and eighty dollars, which Captain Ignacio Elias paid, in the name of Don Ignacio and Doña Eulalia Elias, residents of Arizpe, for the grant of eight sitios of land for raising large stock and horses, at the place called San Ignacio del Babocomari, jurisdiction of the presidio of Santa Cruz, appraised at said sum, which was sold in their favor, without any adverse claimant, by the board of sales, held in this treasury on the 24th of December last passed $380.00

359 GAXIOLO. [RUBRIC.]
IGNACIO ELIAS GONZALES. [RUBRIC.]

And in witness thereof I give the present certificate in Alamos, on the eighth of January, one thousand eight hundred and twenty-nine.

NICOLAS MARIA GAXIOLA. [RUBRIC.]

Crossed out — C — not valid. Interlineations — said — Lorenzo Sortillon — Juan Nepomuceno Felix — valid.

This is an exact copy of its original, which I authenticate and sign in Hermosillo, on the eighth of February, one thousand eight hundred and ninety-eight.

V. AGUILAR. [RUBRIC.]

Translated by

360 And be it further remembered, that afterwards, to wit, on the second day of June, A. D. 1899, the same being the 47th day of the January term, 1899, the court sitting at Tucson, Arizona, announced its decision, which decision is in the words and figures following, to wit:

JUAN PEDRO CAMOU, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } Decree of confirmation. Case #3.

This cause having heretofore come on before this court for hearing upon the pleadings and upon the evidence taken on behalf of plaintiff and defendant, and the same having been duly heard and submitted, and taken under advisement by this court on the 29th day of March, 1894, and said court having ordered, adjudged, and decreed that the claim to the lands described in the plaintiff's petition on file in said cause was

invalid, and said claim having been rejected by said court and the petition of claimant having been dismissed, and an appeal from said judgment and decree having been duly allowed by said court, and said appeal having been duly taken by plaintiff to the Supreme Court of the United States, and said cause having come on to be heard before said Supreme Court at the October term thereof in the year of our Lord one thousand eight hundred and ninety-seven, and having been duly argued and submitted, and it having been decreed by said Supreme Court that the decree of said Court of Private Land Claims be reversed, and it having been further ordered by said Supreme Court that said cause be remanded to the said Court of Private Land Claims for further proceedings, and the mandate of the said Supreme Court remanding said cause having been duly filed herein, and further proceedings having been had in said cause before said court, and further evidence having been introduced on behalf of the plaintiff in relation to the location of the grant
361 described in plaintiff's petition, and argument having been fully heard on behalf of plaintiff and defendant, and said cause having been finally submitted, and the court being fully advised in the premises and having duly considered the evidence submitted in said cause, the said court hereby adjudges and decrees as follows, to wit:

I.

That a grant was made on the twenty-fifth day of December, one thousand eight hundred and thirty-two, by Jose Maria Mendoza, treasurer general of the sovereign State of Sonora, and in its name, unto citizen Rafael Elias, of a tract of land known as Rancho San Rafael del Valle, consisting of four (4) square leagues of land, situated within the jurisdiction of the then Presidio of Santa Cruz, in said State of Sonora, Mexico, and now situated in the county of Cochise, in the Territory of Arizona, and more particularly hereinafter described.

II.

That the said grant was an auction sale of the said tract made by the said treasurer general of the State of Sonora to the said grantee for the price of sixty ($60) dollars per league which price was paid therefor by the said grantee named unto the treasurer of the said State.

III.

That said sale and grant were so made under and in pursuance of that certain law generally known as decree No. 70, of the General Congress of the United States of Mexico, issued on the 4th of August, 1824, and also under law No. 30, of the 20th of May, 1825, enacted by the constituent congress of the then United State of Sonora and Sinaloa, and also under other decrees, and succeeding legislation relative thereto, authorizing such grant and sale to be made by the treasurer general, all of which laws are hereby referred to as being those under which
362 such grant is confirmed. And reference is also hereby made to that certain treaty made between the United States of America and the Republic of Mexico, on the 30th day of December, 1853, under which as well as said laws before referred to such confirmation is made.

IV.

That at the trial of this cause, upon full legal proof and hearing, the petition herein was sustained by satisfactory proofs, and it was also shown that said grant and sale of the tract herein described constituted a valid title lawfully and regularly derived from the Government of Mexico, and from the State of Sonora in said Republic of Mexico, having lawful authority to make the same, and that the said title was perfect and complete at the date of the acquisition of the territory by the United States, and that said grant and sale to said grantee constitutes such a valid title that the United States is bound upon the principles of public law and by the provisions of the treaty of cession to respect it as a valid, complete, and perfect title at said date.

V.

That no part of the premises for which confirmation is made as hereinafter described has been disposed of by the United States.

VI.

That at said trial it was made to appear that every condition and requirement stated in said grant as incumbent upon the said grantee to be performed was performed within the time and in the manner stated in said grant.

VII.

That the confirmation of said grant herein decreed shall not confer any right or title to any gold, silver, or quicksilver mines or minerals contained in such lands, but all such mines and minerals shall remain the property of the United States with the right of working the same,
363 which fact shall be stated in any patent issued under this decree.

VIII.

That this confirmation is made subject to all of the limitations herein expressed, and subject to all the limitations and terms of the act of Congress of March 3rd, 1891.

IX.

That claimant has acquired an undivided interest in and to the said lands hereinafter described, by conveyances executed to him by heirs at law of the original grantees hereinbefore named.

X.

Now, therefore, in consideration of the premises, and by virtue of the power vested in this court by the provisions of that certain act of Congress approved March 3d, 1891, confirmation is hereby made and decreed of the said title of the said Rafael Elias and of his heirs, successors in interest, and assigns in and to all of the said tract, San Rafael del Valle,

which tract is situated in the county of Cochise, Territory of Arizona, and lies along the San Pedro River, fronting towards the Mule Mountains on the east and towards the Huachuca Mountains on the west, and is more particularly described, located, and bounded as follows, to wit:

Commencing at a point south 13° 31′ 30″ east six thousand and thirteen (6,013) feet from post and monument on Limy Hill, from which post and monument Mount Baldy bears north 80° 49′ west, and from which post and monument Bronko Hill bears north 12° 21′ west, according to a plat and survey of San Rafael del Valle, made by Solon M. Allis, and filed in the office of the U. S. surveyor-general at Tucson, A. T., January 16th, 1880; thence north 76° 28′ 30″ east six thousand eight hundred and ninety-seven and five-tenths (6,897.5) feet to a point, the same being the northeast corner of the grant; thence south 13° 31′ 30″ east fifty-five thousand one hundred and eighty (55,180) feet to a point, the same
364 being the southeast corner of the grant; thence south 76° 28′ 30″ west six thousand eight hundred and ninety-seven and five-tenths (6,897.5) feet to a point, the same being the south center of the grant; thence south 76° 28′ 30″ west six thousand eight hundred and ninety-seven and five-tenths (6,897.5) feet to a point, the same being the southwest corner of the grant; thence north 13° 31′ 30″ west fifty-five thousand one hundred and eighty (55,180) feet to a point, the same being the northwest corner of the grant; thence north 76° 20′ 30″ east six thousand eight hundred and ninety-seven and five-tenths (6,897.5) feet to the place of beginning, containing four (4) square leagues, or seventeen thousand four hundred and seventy-four and ninety-three one hundredths (17,474.93) acres.

And the claim of claimant to all other land not so confirmed is rejected.

Done in open court at Tucson, Arizona Territory, this 2d day of June, A. D. 1899.

(Minutes signed.)

JOSEPH R. REED,
Chief Justice.

365 *Appeal and allowance.*

UNITED STATES OF AMERICA, *ss:*

Court of Private Land Claims, Arizona District.

JUAN PEDRO CAMOU, PLAINTIFF AND APPELLEE,
vs.
THE UNITED STATES, DEFENDANT AND APPELLANT.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the 2nd day of June, 1899, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

The said defendant shows to the court here that the statement by the United States attorney to the Attorney-General required by sec. 9 of the

act of Congress establishing this court, approved March 3, 1891, was not received by the Attorney-General within sixty days next after the rendition of judgment therein, but was made on January 5th, 1900, and was received by the Attorney-General on January 13, 1900.

MATT. G. REYNOLDS,
U. S. Attorney, for Defendant and Appellant.

And now, to wit, on January 20th, 1900, it appearing to the satisfaction of the court that the statement required to be made by the U. S. attorney to the Attorney-General by sec. 9 of the act of Congress establishing this court, was not received by the Attorney-General within sixty days next after the rendition of the judgment therein, but was made on, to wit, the fifth day of January, A. D. 1900, and was received by the Attorney-General on January 13, 1900—

It is ordered that an appeal be and hereby is now allowed as prayed for.

WILBUR F. STONE,
Associate Justice, C. P. L. C.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims. Jan. 24, 1900. Jas. H. Reeder, clerk.

366 *Citation on appeal to Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to Juan Pedro Camou, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellee, being in case No. 3 on the Arizona docket of said Court of Private Land Claims, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of January, in the year of our Lord nineteen hundred.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiff and appellee, this 24th day of January, 1900.

WILLIAM HERRING,
Attorney for Appellee.

(Endorsed:) Filed in the office of the clerk, Court of Private Land Claims. January 31, 1900. Jas. H. Reeder, clerk.

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Certificate of the clerk.

UNITED STATES OF AMERICA,
Territory of Arizona.

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing is a full, true, and correct transcript of the record, proceedings, papers, and judgment in the cause entitled Juan Pedro Camou against the United States, No. 3 (San Rafael del Valle private land claim), as the same appear in the records of my office.

I further certify that no (additional) opinion has been filed in this case.

Given under my hand and the seal of said court, at Tucson, Arizona Territory, this 15th day of March, A. D. 1900.

[SEAL.]

JAMES H. REEDER,
Clerk.

By R. L. LONG,
Deputy Clerk.

(Indorsed on cover:) File No. 17688, Court of Private Land Claims. Term No. 229. The United States, appellant, *vs.* Juan Pedro Camou. Filed March 26th, 1900. Office Supreme Court of U. S. Received Mar. 22, 1900.

( )

35
No. 229.

(Br. of Atty. Gen. Richards
for Pope) for U. S.

Office Supreme Court U.S.
FILED
MAR 22 1901
JAMES H. McKENNEY,
Clerk.

Filed Mar. 22, 1901.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

UNITED STATES, APPELLANT,
v.
JUAN PEDRO CAMOU. } No. 229.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

UNITED STATES, APPELLANT,
v.
JUAN PEDRO CAMOU. } No. 229.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR THE UNITED STATES.

On the 3d of December, 1891, JUAN PEDRO CAMOU, claiming to be the owner in fee of the private land claim situated in the county of Cochise and Territory of Arizona, commonly known as the SAN RAFAEL DEL VALLE GRANT, filed his petition for the confirmation of the same, alleging it to contain a little over twenty thousand acres. (R., 1–3.)

On the 21st day of February, 1893, plaintiff filed an amended petition, upon which the cause was tried. (R., 5–8.)

In the amended petition it is alleged that the petitioner is the owner in fee of the tract of land in the county of Cochise, in the Territory of Arizona, in the San Pedro Valley, on both sides of the river, between the range of mountains known as the Huachuca Mountains and the

range known as the Mule Mountains, the southern boundary line being about 6 miles north of the southern boundary of the Territory of Arizona, its northern boundary about 10 miles southwesterly from the city of Tombstone and about 3 miles southerly from the old town of Charleston.

Then follows the description of the grant as contained in the survey made by Mr. Roskruge.

Plaintiff claims the land by purchase under divers mesne conveyances from the original grantee, and alleges that at the date of the acquisition of said territory by the United States said title was complete and perfect.

That the grant was made and patent issued therefor to Rafael Elias under and by virtue of article 11 of the sovereign decree No. 70 of the general congress of the Republic of Mexico of the 4th of August, 1824, and said patent was issued to said Rafael Elias on the 25th of December, 1832, by José Maria Mendoza, treasurer-general of the State of Sonora, in accordance with the above decree and law No. 30 of the 20th of May, 1825, of the State of Sonora and Sinaloa, regulating the system of selling the public lands.

That the condition imposed upon the grantee and his successors was that they should keep, settle, and protect said lands, without their being deserted or abandoned for any time, and in case total abandonment took place for three consecutive years, and anyone petitioned for them, upon the fact being proven, they would be declared public lands and regranted in favor of the highest bidder,

except when the abandonment be occasioned by the notorious invasion of the public enemies.

It is alleged that the grantors and predecessors in interest of the petitioner, upon issuance of the patent, duly entered into the possession of said granted premises, settled and occupied the same according to said conditions.

That no breach of the conditions of said grant was ever claimed by the Republic of Mexico; that said grant has been duly located and recorded in the archives of Mexico prior to the 25th day of September, referred to in Article VI of the Gadsden treaty; that the grantors and predecessors in interest of the petitioner were the owners of said grant at the time of the adoption of the treaty of Guadalupe Hidalgo and were citizens of the Mexican Republic. That the grant in question, according to the survey and map made by George D. Roskruge on June 21, 1891, contains 20,034.62 acres, which map is filed as an exhibit in the case.

Several persons are named in the petition as being in possession of portions of said grant otherwise than by lease or permission of the petitioner.

It is further alleged that the claim had been presented to the surveyor-general of the Territory of Arizona, pursuant to an act of Congress approved July 15, 1870, and departmental instructions of January 5, 1877; that under said authority the surveyor-general examined into the validity of said grant, authorized a survey thereof, reported thereon favorably, and recommended the confirmation of said grant

by Congress. The petitioner prays that the validity of the grant may be inquired into by the court. (R., 5–8.)

This claim is based upon a certified copy of a *testimonio* (Spanish, see R., 87—translation, see R., 95) offered in evidence by the plaintiff, from which it appears that Joaquin Elias, on behalf of Don Rafael Elias, presented his petition to the treasurer-general of the State of Sonora, stating that, needing land for stock purposes, he asked for the public lands adjacent to the ranch of San Pedro, within the jurisdiction of Santa Cruz, as far as the place called Tres Alamos, binding himself to make good to the nation the duties which belong to it and whatever else might be just to acquire the title deeds and a confirmation thereof. This petition is dated at Arizpe, March 12, 1827. (R., 96.)

On July 1, 1827, the treasurer-general, Nicolas Maria Gaxiola, issued an order directed to the *alcalde* of the police of Santa Cruz, empowering him, without prejudice to any third party who might have a better right, and previously summoning the adjacent owners, to proceed to survey, appraise, and offer at public sale for thirty consecutive days the lands indicated in the foregoing petition, acting strictly in all things in accordance with the sovereign decree of the constituent congress of the State, No. 30, of May 20, 1825, and the regulations attached to it, and upon completing the proceedings he should transmit the same to the treasury, giving notice to the bidders that they may present themselves, either in person or by attorney, at

the auction that would take place after the three public auctions provided by law. (R., 96.)

In obedience to said order, at the *presidio* of Santa Cruz, on August 20, 1827, Pablo Fraijo, constitutional *alcalde* of the police of the *presidio* of Santa Cruz, executed the act of obedience, wherein he states that he would go to the ranch of San Pedro in order to proceed with the survey of the lands petitioned for—that is, those that are petitioned for by the said Rafael Elias, whose survey must be made separately from those that have to be made for the other petitioners, whose entries are made jointly and appear in the copy of the writing with which these proceedings begin. (R., 96.)

The *alcalde* proceeded to appoint counters, tallymen, and chainmen, and they were citizens Maurico Niera, José Sainaniego, Manuel Soto, and Camilo Arvisu, who were duly qualified, and after examining the interested party and the adjacent owners the survey proceeded. (R., 97.)

The proceedings of survey state that at the place called San Rafael del Valle, on the 21st day of August, 1827, in order to begin the survey of the lands to be taken up by the citizen Rafael Elias, a cord of 50 *varas* was prepared and poles tied at either end. The center point taken was at a place where "there are some small hills," and, taking the direction of the south, there were measured and counted 200 cords, which ended at the limits of the San Pedro ranch, and the superintendent of said ranch, being present, exhibited documents which showed that his survey extended up

to that point, a monument of which standing there was taken as the boundary of one and the other of the interested parties.

After returning to the center monument, a northerly direction was taken, "measuring and counting 200 cords, which ended upon a valley where there is a small calcareous knoll, where I ordered to be placed a heap of stones as a monument." (R., 97.)

Having again returned to the center, there were measured and counted toward the east 50 cords, "which ended upon a valley and fronting the Mule Mountains, and where I put a heap of stones as a sign of a monument."

Having again returned to the center, there was measured toward the west 50 cords, which ended upon the same valley, fronting toward the Huachuca Mountains, where there was put a heap of stones as a sign of a monument.

Having squared the measurements, there resulted 4 *sitios* for the raising of cattle and horses in favor of the aforesaid citizen, Rafael Elias, with which he was satisfied, and he took possession of the land so segregated, and was informed that at the proper time he was to mark his limits by monuments of stone and mortar, as provided by law. (R., 97–98.)

At the conclusion of the survey, the *testimonio* states that immediately thereafter the *alcalde* proceeded to the appraisement of the land through experts, who were Manuel Soto and Camilo Arvisu, who, having taken the oath in conformity with the superior regulations in the

premises, adjudged the value of the four *sitios* to be $240, at the rate of $60 each, because they had running water, and with this appraisement the *alcalde* put them up at auction, asking for bidders, for thirty consecutive days, from August 30 to September 28, 1827, and there being no bidders, the proceedings were closed. By order of the 30th of the same month, after summoning the interested party, the *alcalde* remitted the proceedings to the treasury-general, to be put up at auction, which, by the decree of February 7, 1828, were placed before the fiscal attorney, whose opinion follows. (R., 98.)

The report of Attorney-General Brena, dated February 7, 1828, states that there are extensive defects in the proceedings; but as they do not present any great obstacle he omits comment upon them, and says he "only finds it strange that no use was made of the compass in making the survey, as this instrument is indispensable to follow a route. So that to survey the land over again for want of this requisite is to enter into difficulties and greatly to injure the claimant, for which reason the fiscal attorney, there being no contestants that show any damage to third parties, is of the opinion that this fault be overlooked, and that the proceedings be continued to adjudication, according to the forms and requisites in use." (R., 98.)

The *testimonio* then states that the treasurer-general was satisfied with the foregoing report of the fiscal attorney, and by order of April 16 proceeded with the three public *almonedas* on the 16th, 17th, and 18th,

asking for bidders, and there appearing none, the 4 *sitios* for raising cattle and horses at the place San Rafael del Valle were auctioned off in favor of Rafael Elias, as appears by the last *almoneda* which follows. (R., 99.)

The third *almoneda* recites that the board having convened, they proceeded to the last auction for the 4 *sitios* of land to which the prior proceedings referred, and there being no other bidder the same was sold to Elias; further reciting, "in these terms these proceedings concluded, the 4 *sitios* of land for raising cattle and horses being publicly and solemnly auctioned off in favor of the interested party in the sum of $240, for which they were appraised," and the same is signed by the members of the board. (R., 99.)

A further recital is made that the attorney for Elias, Tiburcio Gomez, proceeded to pay into the treasury $240, in which the 4 *sitios* at the place of San Rafael del Valle had been auctioned off, as appears by the certificate which follows. (R., 99.)

The certificate of the treasurer-general states that he has entered in the book of the treasury for the current year, on folio 14, the charge for grant of lands, $240, paid by Don Tiburcio Gomez in the name of Don Rafael Elias, for the grant of 4 *sitios* of land for the raising of cattle and horses in the place named San Rafael del Valle, in the jurisdiction of the *presidio* of Santa Cruz, each *sitio* having been appraised at the rate of $60 on account of having running water; and the same is signed by Gaxiola and Tiburcio Gomez. (R., 99.)

Then follows the certificate of the treasurer-general, Gaxiola, dated April 21, 1828, concluding the proceedings.

This concluded the proceedings for 1828, and, so far as the *testimonio* is concerned, there is nothing appearing to show why title was not issued at that time.

Immediately following is the grant or patent by which the treasurer-general of the State of Sonora, on December 25, 1832, seeks to extend the title, stating that the proceedings were concluded with all the requisites and formalities provided by law, and remained in the custody of the treasurer-general as a perpetual monument of title. Wherefore, in the exercise of the faculties conferred upon him by law, and in the name of the sovereign State of Sonora, he granted in due form of law the 4 *sitios* of land for the raising of cattle and horses comprised in the locality of San Rafael del Valle, situated in the jurisdiction of the *presidio* of Santa Cruz, in favor of the citizen Rafael Elias, to whom he conceded, gave, and adjudged the said land by way of sale, with the condition and permanency established by the law, for himself and his successors, with the injunction and condition that he must keep said *sitios* occupied and settled, without letting them be abandoned or deserted for any time, with the understanding that if they be abandoned for the period of three consecutive years, and there should be any person to petition for them, in such event, with previous proof made of the fact, they would be declared public lands and granted anew to the highest bidder, excepting in such cases where the abandonment is caused by

the notorious invasion of the public enemies, admonishing said Elias and his successors that they must keep and confine themselves to the lands and limits as marked precisely in the foregoing proceedings of survey, and comply exactly with article 30 of law No. 30 of May 20, 1825, which imposes obligations to mark the metes and boundaries with monuments of stone and mortar. (R., 100–101.)

Indorsed thereon is the following memorandum: "A memorandum of this present title is entered in the proper book kept in the archives of the treasury-general."

This title was evidently issued under and in pursuance of the order of Governor Bustamante, dated Arizpe, April 29, 1833, which is numbered 762 (R., 101), wherein he states that there was auctioned off on April 18 and December 24, 1828, the properties of San Rafael del Valle, San Juan de las Boquillas y Nogales, and San Ygnacio del Bavocómari, situated in the jurisdiction of Santa Cruz, to the citizen Rafael Elias, owner of the first of said properties; Captain Ygnacio Elias Gonzales and Nepomuceno Felix, of the second; and Ygnacio and Eulalia Elias, of the third. Having shown that it was no fault of theirs that the treasurer-general of the State that was once united had not issued them their respective titles, and from which office they demanded them anterior to July 10, 1830, he would proceed to issue said titles in accordance to what is provided in decree No. 27, of August 11, 1827.

It is admitted on behalf of the Government that the

expediente of this grant is on file in the archives at Hermosillo and is in the usual form; that although the grant was dated December 25, 1832, the *toma de razon* was not made nor the title delivered until May 8, 1833. (See certificate of *toma de razon*, R., 102.)

It will be noticed from the petition for the grant and the survey that the location of the San Pedro ranch is important and necessary. It has been contended by the Government that the location of the San Pedro grant is entirely within the Republic of Mexico, and that there is an excess (*demasias*) over the *cabida legal*, between the north line of said grant and the international boundary line. It is also contended by the Government that the center monument, called for in the survey of the San Rafael del Valle grant, can not be found.

R. C. Hopkins testified on behalf of the plaintiffs, and his testimony may be included in an admission by the Government that the *expediente* on file is in the usual form; that the signatures, so far as the Government is able to determine, are genuine; that the *toma de razon* of the same exists in the proper book in the proper archives. (R., 27–32.)

The plaintiffs introduced in evidence a large number of documents showing the deraignment of title from the original grantee to Camou. (R., 32–33.)

George G. Roskruge testified on behalf of the plaintiffs that he has resided in Arizona for twenty-two years and has been a surveyor by occupation for twenty years. Made a survey of the tract of land known as

the San Rafael del Valle grant in May or June, 1891, at the request of Mr. Camou. There were with him John W. Taylor, Ed. Wood, Douglas Snyder, and a portion of the time Max Marx; also the son of counsel, Mr. Herring, and Mr. Camou part of the time. He had a translation of a certified copy of the *expediente* with him; went down the valley of the San Pedro River, covering a point from Charleston running south to San Pedro, in Mexico; went all over the valley and looked for what was described in the *expediente* as a hill or mountain in the center of the valley as a central point, which he failed to find; then went to the limy hill, where he finally found a monument on top and a post in it that had been set there and marked by Mr. Charles M. Allis, deputy United States surveyor, who made a survey of the grant for the United States Government. This post which he found in the monument on the summit of the limy hill was the north center of the grant as called for in the *expediente*, and there was no other limy hill in the whole neighborhood. Witness states that he never saw anything located "differently" in his life. It looked like a lot of burnt lime, calcareous, or whatever it might be called. The whole top was covered with a limy formation, like cinders, and there were stones broken and fractured all around.

He ran from there north 85 degrees east 6,204 feet to the summit of a hill, where he found a monument. It was an old monument, which he took to be the monument of the grant, it being very near to what he would call at right angles to the center line of the grant coming up the valley.

He then came back to the limy hill and ran north 81 degrees west 6,200 feet, where he found another monument of stone. It looked like an old monument, but it was not as high or as big as the one at the east.

Having found these two monuments, he next ran down the valley to find, if he could from the papers he had, the north boundary of the ranch of San Pedro, which was called for in the *expediente* as being the southern boundary of the grant: chained down through the center of the valley; had a translation of the San Pedro grant, and went to a monument that he supposed to be the center of the grant. That monument was a square-built monument, the best monument the witness had ever seen in Arizona, except the boundary monuments. It was built of stones and had the appearance of being built by a mechanic and not thrown loosely together, but it was a regularly square-built monument. It was within the boundary of the United States. Witness then went to Ochoaville, where there were old ruins which he says answered the description called for in the *expediente* as going to the northeast; witness refers to the call in the San Pedro *expediente*. He found a lot of ruins on the bank of the San Pedro River and found an old monument of stones. Then he ran farther on toward the northeast and found two little hills. This old monument which he found at the San Pedro River he believes to be one of the monuments of the San Pedro grant as called for.

He then continued his line until he came to a place out from the valley which answered the description of

the little hills, and they were the only little hills that he found in the whole valley that would answer the description. He then ran over and found a stone monument which is called for in the San Pedro *expediente*. Witness gives the caution here (R., 39): "I am running out the San Pedro *expediente* now from the center northeast." He then went to the Bachata *cañon*, a point in the San Pedro, and had no difficulty in finding this *cañon*, which is large and well defined. There he found a monument, but not having a certified copy of the *expediente* with him at that time, and having no one with him who could tell him that it was the Bachata *cañon*, he left and came back to Tucson, and notified counsel that he wanted a certified copy of the *expediente*, and would return with witnesses who could tell him whether that was the Bachata *cañon* and whether those were the points called for in the *expediente*. Witness subsequently returned to the valley to continue his survey, and there appeared before him as witnesses to the name Bachata applied to the *cañon* an old Mexican by the name of Gonzales and another by the name of Concepcion Elias.

Mr. Douglass accompanied him on the second trip. He stated he went to the monument so well built, the center of the San Pedro, and asked the Mexicans what monument it was, to which they replied that they did not know, but it had been there a long time, ever since they could remember. Witness pointed to the line monument and asked them what it was, and they said it was a line monument; that one of the Mexican wit-

nesses was a soldier when that monument was built; the square monument was there several years before the line monument was built. Witness asked them to take him to the ruins, and at the ford—crossing below the ruins—Mr. Snyder and himself chained the distance up to the old ruins. Saw no other old ruins in the valley except these. He asked if there were any other old ruins in the valley, and the Mexicans replied that there were none, only away down below Fairbanks. At the request of the witness the Mexicans took him to the ford and said that it was the old crossing; they could trace the old ruins all over the ground. There was a Texan living on the bank of the river, having been there a long time, but he does not remember his name. From there they went over to the little hills which could be seen from there—they were stony hills. Witness then requested the Mexicans to take him to the brushy place mentioned in the *expediente*, and as it was all brush they could not find anything, but they were sure *they were on the right track*. Witness asked them to take him to the Bachata Cañon, and they took him to the place where he had been before and said that it was the Bachata *Cañon*. That gave him good reason to believe that he had found the northeast corner of the San Pedro grant. In the *cañon* they found an old big monument of stones, and in looking near it they could trace out that it had originally been a monument, built up square; but the foundation was coming out, similar to the other one, but that it had fallen down.

Witness produced a photograph of what he calls the initial monument of the San Pedro. The witness also presented a photograph of the little limy or calcareous hill. (Exhibits 9 and 10.)

Witness presented and identified photograph of the monument found in the Bachata *Cañon*, being the northeast monument of the San Pedro grant, which was marked Exhibit 11.

Exhibit 12 was a view looking down the Bachata Cañon from the northeast corner of the San Pedro grant.

Exhibit 13 was a second view of the initial monument of the San Pedro grant.

Exhibit 14 was a photograph of the monument at the northeast corner of the San Rafael del Valle grant.

Exhibit 15 was a photograph of the northwest corner monument of the San Rafael del Valle grant.

Having found the Bachata monument and *cañon*, he then ran due west to the center of the valley, right to the San Pedro River, and finding nothing, projected the line farther west and searched on the plain, but could not find a single thing. Witness put a post on the north line of the San Pedro grant, which was used as a base line, which was 13,100 feet from the monument in the Bachata *Cañon* down to the San Pedro River. He then ran from the north center down to this point, which he marked as the south center. Witness ran other lines between these all around the fences in the grant.

Witness produced and identified a photograph of the

San Pedro grant monument on the rocky hill in front of the Sierra de Huachuca, marked "Exhibit 16."

Exhibit 17 was a photograph produced by him "of hills on the east side of the San Pedro River, Pyatt's house at the foot of the hill, "the line terminating in the valley at the skirt of a hill (quoting from the *expediente*), at the distance therefrom of 3 cords, where I caused a corner monument to be placed;" it is looking southwest.

Exhibit 18 was a photograph, produced and identified by the witness as of the "Sierra de Huachuca," from the monument on the rocky hill in front of the Huachuca Mountains.

Exhibit 19 was a photograph "showing the Huachuca Mountains in the rear."

Exhibit 20 was a photograph produced and identified by the witness as "View looking from the post S. R. G. No. 8 to old N. E. corner monument of San Rafael del Valle P. L. C. monument on hill in center."

Statements were taken from the Mexican witnesses who were there by one of the counsel. There were also present Douglass Snyder and Mr. Marks, but he does not remember the others. (These statements were offered in evidence, but as the Government had the witnesses present they were excluded.)

Witness made a calculation of the area within the lines which he surveyed and described, and it amounted to 20,034.62 acres; also made a map from the data which he obtained by this survey. Witness identifies the map and says it is a correct delineation of what he

saw and found upon the various points described by him. (Exhibit 21, R., 180.)

This is the testimony in chief of Mr. Roskruge, who is the same gentleman who testified in the Sonoita case and made the survey, and in making it paid no attention to distances and quantity called for, and but little attention to the directions, and he evidently made this survey in the same manner.

On cross-examination he states that he had the *expediente;* he undertook to retrace the steps of the prior survey, but he did not undertake to make the measurement, because, as he says, he could not find the center monument; he hunted all over the country for it without finding it, and is unable to explain why he did not go to the north line of the San Pedro grant to start with, in order to measure back and find the center monument. Witness states that in hunting the north line of the San Pedro grant to find the south boundary of the San Rafael del Valle he located the line in the United States, and is satisfied that it is inside; thinks that the center monument of the San Pedro grant is half a mile inside of the United States line—that is, what he believes to be the center monument. He went to what he supposed to be the initial monument of the San Pedro grant, and his survey of the San Rafael del Valle is based upon the fact that he located this initial monument of the San Pedro grant in the United States. Witness is unwilling to admit that his survey is wrong provided the initial monument of the San Pedro grant should turn out to be 10 miles south of the international boundary line.

Witness did not find any limestone hills located along the San Pedro, and did not see anything which looked like them. He went all over the country down to where the custom-house is; went clear down to Mexico on the San Pedro ranch, but did not find any limestone hills there.

On further cross-examination, going over the *expediente* with the witness, he states (R., 41–42):

> Q. Now let us go over the *expediente*. It says in the presence of the interested party the measurement was begun at a place where there were several small hills.
>
> A. Yes, sir.
>
> Q. Did you find that point?
>
> A. That is the point I told you I did not find.
>
> Q. You did not?
>
> A. No, sir.
>
> Q. Then, "continuing a south course, there were measured and counted 200 cords, the line terminating at the line of the *rancho* of San Pedro." Did you find the *rancho* of San Pedro near that line?
>
> A. I found the *rancho* of San Pedro away down in Mexico.
>
> Q. Did you undertake to find whether there were some small hills north of that? You say you found the *rancho* San Pedro south of the line.
>
> A. I found a ranch called San Pedro; yes, sir.
>
> Q. And did you find any small hills north of that ranch?
>
> A. I don't recollect of any small hills north of that ranch until I come up this side of the

line, probably about a mile, and then there were some small hills.

Q. Would they have answered this call?

A. Well, it would have been a terrible stretch if they did.

Q. Wouldn't they come as near answering this call as a pile of stones answers your monuments out there?

A. No, sir.

Q. How far did you continue north before you located these hills?

A. Which do you refer to?

Q. I am speaking of the small hills at which the survey is located.

A. I never found any.

Q. There were some small hills north of the San Pedro ranch—as you found the ranch in Mexico—at the time.

A. Yes, sir.

Q. (Reading:) "And in his name was present the administrator of said *rancho*, with documents showing that his measurement extended to that point, etc. Returning to the center, the course was run to the north two hundred cords, which terminated in the same valley at a point where there is a small limy hill." Now, how far north from the San Pedro ranch do you locate this limestone hill?

A. As near as I can tell, probably a good 25 miles from the San Pedro ranch.

Q. And that you take as the north center monument?

A. Yes, sir; that is what I take it for and believe it to be.

Q. Twenty-five miles north of the San Pedro ranch you found a little limestone hill (interrupted)——

By Mr. HERRING:

Q. Are you speaking of the ranch or the ranch house now?

A. I am talking about the San Pedro custom-house. That is the only San Pedro I know. That is 8 or 10 miles below the line, where Mr. Elias lives.

Witness states the little limestone hill is 15 or 20 miles north of the international boundary line. He found a monument there, and at that point was 25 miles north from the ranch house of the San Pedro ranch. States that he hunted for the monument which the *expediente* says was 50 cords east from the center and terminating in the valley in front of the Mule Mountains, but did not find it. He believes that he ran a line and it brought him somewhere on the *mesa*. The Mule Mountains were 8 or 10 miles away and he did not find any pile of stones there. The west center monument which the *expediente* locates as 50 cords west of the center terminating in the same valley, in front of the *cordillera* of the Sierra de Huachuca, at which place a pile of stones was placed for a monument, he did not find, although they all hunted for it. He ran a line from the north center monument 50 cords west, but he did not find the monument.

As to the manner in which he made his survey, he says he came down the river and ran a line from the limy hill south on his plat, and taking the distance

called for in the *expediente*, 50 cords, measuring them out, he drew his lines from the northeast and southeast down, showing what he believed to be the land covered by that *expediente* between the San Pedro and the limy hill, and that he paid no attention to the area designated in the *expediente*. Says he designated the first course that he laid off from the north center monument by platting, and had no instrument. He ran down on Allis's course 10½ miles and found the place for the monument and checked back on it, and from there he ran farther south, connecting with a flag that he left on the bank of the river, which he put there after running east from the Bachata *Cañon*. He took as a basis for his survey the monument established by Mr. Allis with a pole in it, on the top of a hill.

Witness states that he established the subordinate points, but was unable to establish the initial point; he did not try to establish it, however, but looked all over the country for it and did not find it as described in the *expediente*. As a matter of fact, he states that he could not find any such initial monument as called for in the *expediente* in the valley of San Pedro and included within his survey; says the *expediente* is without any initial point so far as he is able to determine; at least he could not find it. Witness attempted to find the little hills called for as the center monument, going up the San Pedro Valley toward the ranch, and the only ones he could find were those called for in the San Pedro grant, the second course from the ford, and he supposed they were one of the monuments of the San Pedro ranch;

says he could not tell anything along the whole valley that would answer the calls for the initial point; that he did not determine the north center monument by any measure, but just took it arbitrarily and went right to it, as he could not get a measurement from anywhere. He did not run the outside lines of the grant; he simply ran the end lines and then squared it. Says he believes the San Pedro grant is in Arizona; he knows where it is down below. Elias had leased a lot of land on this side of the line, and Mrs. Elias told him the north line of the San Pedro grant was above Hereford. Taking the *expediente*, witness says if it were necessary for him to establish the initial point, he could not make the survey. (R., 33–50.)

IGNACIO BONILLAS testified on behalf of the petitioners that he was a mining engineer and surveyor and had been for eleven years in the State of Sonora and in the Territory of Arizona. Knows the international boundary line as it runs between the Huachuca Mountains on the west and the Mule Mountains on the east, and he finds that the line runs through the southern extremity of the Huachuca Mountains and does not touch the Mule Mountains at all, leaving them to the north.

Being made the witness of the United States, he testified that he had made a survey of the San Pedro Palominas ranch, lying south of the line; that his survey was simply a resurvey of the survey made by Pedro Bamolera and he used his map and field notes, AND LOCATED THE RANCH SOUTH OF THE INTERNATIONAL BOUNDARY LINE. There was a surplus or *demasias*

south of this line. Witness identifies a map made by himself and states that it is correct, showing the location of the San Pedro ranch as Mr. Bamolera gave it and according to the resurvey which he made of it.

Going down the San Pedro River, he states, there is a row of hills, which he would call *lomas*, along the river, but not all the way; they are located in different places, but not continuously; they come up to the international boundary line and they are along the San Pedro River, which runs up into Arizona. Witness's map (above referred to) is a correct location of his resurvey, and the lines were verified by himself. He states that he found some mistakes in the original survey and that was the reason he was appointed to make the resurvey; that THE SAN PEDRO GRANT AS LOCATED BY BAMOLERA, AND RELOCATED BY HIM, IS ENTIRELY WITHIN OLD MEXICO, AND THE MAP IS CORRECT. This map was offered in evidence by the Government and will be found in the record. (R., 246.)

On cross-examination he states that he did not have the *expediente* of the San Pedro grant with him, and did not pretend to locate the calls of that grant, and does not know whether the map locates them as described in the *expediente;* he was appointed simply to run certain lines of and correct the survey previously made, and does not know whether the map in any respect locates the calls of the grant as expressed in the *expediente*, but says it is correct as to the distances and courses marked on it; has no recollection where and what the natural monument called for in the San Pe-

dro grant is. Does not know of any other San Pedro grant in that vicinity on the San Pedro River. The original grant, or *cabida legal*, is supposed to be 4 leagues. Witness translates the term "*cabida legal*" to mean the area called for in the title papers of the grant. (R., 50–54.)

DOUGLASS SNYDER testified on behalf of the plaintiffs that he resided in Tucson, and in 1891 went with Roskruge to assist in the survey of the San Rafael del Valle grant. There were also there the parties known as Concepción Elias and Antonio Gonzales. They were attempting to locate either the south end of the San Rafael del Valle or the north end of the San Pedro grant. When the two Mexicans came they took them over to an old monument, partly fallen down, close to the boundary line, whereupon Roskruge asked them what that monument was, and they replied they did not know. He asked when it was put there, and he thinks Gonzales replied that he was a soldier at the time the boundary was established, and that monument was there long before that. Roskruge asked them to take them to the old ford, and they went a little beyond Ochoaville to the old ford, where they crossed the river and skirted along the small hills that lie to the east from the river, and finally arrived at what they called the Bachata *Cañon*, and on the bank of it found quite a large monument, built of rock, which had the appearance of being built there a very long time, judging from the drift and vegetation banked around it. Witness says he has been out frequently before with surveying parties.

On cross-examination the witness states that he does not know how far this *cañon* is from the international boundary monument. After they crossed the river, they rode along on horseback in the brush for an hour and a half or two hours; that is as near as he could come to the distance. The old monument, which was partially fallen down, is probably a quarter of a mile from the international boundary line, which is in plain sight looking diagonally across the valley. The monument found in the Bachata *Cañon* was a pile of stones. He has seen similar piles scattered over the country, but not many. Witness describes this monument as a large monument and he could not conceive why it was there. It was a good-sized monument and quite large. The stones were large at the bottom and smaller as you got to the top. At the bottom were big bowlders, probably 18 inches in size. (R., 54–56.)

Max Marks testified on behalf of the plaintiffs that he lives in Sonora, but formerly lived in Tucson, in Arizona, and knows Roskruge and Douglass Snyder; was with Roskruge in 1892 on the survey and knows the country pretty well; lived for five years at the San Pedro custom-house; remembers the two Mexicans, Concepción Elias and Antonio Gonzales, being present. When they came, the party went to what they believed to be the center initial monument of the San Pedro grant. From there they went down toward what was pointed out as the old ford, on the west bank of which, before they crossed, they found an old monument which the *expediente* of the San Pedro grant

calls for. They crossed the river, and there were some small hills on the east side of it, and from there they went to a rocky hill where they found a monument of stones; and from there the Mexicans took them up to what was called the Bachata *Cañon*, to which they had requested them to take them. Roskruge and the witness rode ahead and were down in the *cañon*, and riding up the south bank a little ways they found the monument. This was after the *cañon* had been pointed out to them by the Mexicans. The Bachata monument the witness describes as very large; it was not as high then as when new, having toppled over, but the base looked as well put up as when it was first placed there.

On cross-examination witness stated he went after these two Mexicans down in Sonora and found them at Santa Cruz, 30 miles away, and accounts for his securing them because he was around the Bachata *Cañon* and a Mr. Green told him that he thought it was the Bachata *Cañon*, but would not be sure of it; so he tried to find men who knew it was the Bachata *Cañon*, and at San Pedro he was informed that he might find them at Santa Cruz, as there were old men there that used to live on the ranch; so he went after them and found these two men who could show him the Bachata *Cañon*. They told him they knew exactly where it was, so he brought them up. They went to find the Bachata *Cañon* because they were trying to establish the San Pedro grant, and it was one of the main points, because it was a natural object. Witness was shown photographic Exhibit 13, and says he thinks

it is the center monument of the San Pedro grant, but it is possible it may be the Bachata *Cañon*, having only seen the picture but once before. That monument is in the United States; he could not tell the exact distance inside of the line, but from half a mile to a mile perhaps. (R., 56–58.)

CHRISTOPHER LAYTON testified on behalf of the defendants that he first came into the valley of the San Pedro in 1846, when a member of an expedition of 500 men, independent of the officers. They came in through San Bernardino Pass, quite a distance above Contention, and went down the valley, leaving it about 2 miles below where the Babocómari stream comes in. Their expedition sometimes would cover a considerable stretch of territory, and there was no one living in the San Pedro Valley at the time, and he never saw any signs of anyone. (R.)

P. C. MERRILL testified on behalf of the defendants that he first came into the San Pedro Valley in 1846, and since that time had been familiar with the valley from Benson to the international boundary line. Found no one living in the valley at the time he first came there. He came back to the valley again in 1877, and they made a halt at the Huachuca Mountains, Gardiner's ranch, and found a company of United States soldiers and officers at what is now called Huachuca fort; from there they kept on south near the end of the Huachuca Mountains, and he learned the names then. He came to a monument between the two republics which was very prominent and easily discovered. From

information he had received from General Wasson he was very pointed in those matters. After coming to the monument he turned around and went down the valley as far as Tres Alamos, which is about 4 miles from the international boundary line. There was nobody living there at the time.

On cross-examination he states that the only person whom he met in going through the valley was a man by the name of Landers, who was not an actual settler any more than he was. This was in 1877. Knew a man by the name of J. H. Slaughter, who was sheriff of Cochise County, but he did not see his house or any other house in the valley in 1877, and to the best of his recollection there was no house in the San Pedro Valley then. (R., 60–63.)

HENRY O. FLIPPER testified on behalf of the defendant that he was a civil engineer and employed at the time as special agent of the Department of Justice; that he was familiar with the Spanish language and had had eleven years' experience in surveying Spanish and Mexican grants in Mexico and in examining the archives and records of those grants; that he had examined the documents in the archives at Hermosillo, State of Sonora, Mexico, in relation to this grant; that the matrix or *expediente* is in the archives; that the *expediente* begins with a petition by Ygnacio Elias and Eulalia Elias, in company with Rafael Elias, Capt. Don Ygnacio Elias, and Nepomuceno Felix, signed by Joaquin Elias, Rafael Elias, and Eulalia Elias; that the word "Ygnacio" is erased and "Rafael" written

over it; that the Spanish words for "Dona Eulalia Elias" and for "in company with D. Rafael Elias, Capt. Don Ygnacio Elias, and D. Nepomuceno Felix" have been crossed out; that in the signatures "Rafael" has been written on top of "Ygnacio" and "Eulalia Elias" crossed out; that this petition is a copy and not original; that the usual statement that the petition is admitted is omitted; that the order of Gaxiola appointing the surveyor is a copy, including the signature of Gaxiola; that the application, act of obedience, appointment of assistants, and the examination of the ground, survey, and appraisement, the *pregones* (publications), order to approve ability to stock, etc., the declaration of witnesses, act of conclusion, and notification of Elias, are all in the same handwriting; that the signatures to the petition are all in the same handwriting, and that handwriting is the same as in the body of those writings; that the three *almonedas* (public offers of sale) are signed by Treasurer-General Gaxiola, but not by the Attorney-General, Manuel Brena; that there is a certificate of payment for $240, but nothing about the usual fees for title; that there is attached to the *expediente* a copy of the certificate read in the Babocómari case to the effect that the State Government had consulted the Supreme Government and reply was awaited before the title would be issued; that an indorsement on the *expediente* stated that title was issued December 25, 1832, and that there was a *toma de razon* in the proper book, stating that title was issued to Rafael Elias Gonzales.

Mr. Flipper also testified that he had examined the

large monument described by Mr. Roskruge; that it was a monument on the international boundary line, built in 1853 or 1854 by the American Boundary Commission; that he knows it was such because it was so marked when he was there in 1885; that the history of this monument is given in the report of Major Emory, and is that the American commission built it as on the line, and that when the Mexican commission arrived later it was unable to find this monument and built another about a quarter of a mile farther west; that he had retraced the line and knows where both of them are.

Witness further testified that he had investigated this grant on the ground, having a copy of the *titulo* and claimants' map; that he went to the north center monument, which is a post set in a pile of limestone on top of a small hill; that he went thence south down the valley hunting for the center or initial monument, but was unable to find it, as there was no place he could identify as being the place described in the *expendiente;* that he went to the place marked on claimants' map as the south center monument, but could not find it; that he went all over the ground laid down on that map, but could find no monument or anything resembling one; that he took a man from Mr. Green's ranch there and went to the southwest corner, where there is a fence but no monument, the man saying the corner is supposed to be where the fence is, but there is none there nor anywhere in the vicinity; that he went to the southeast corner, but was unable to find anything marking that corner, although he

ran out the full length of the south line from the corner of that fence; that the line he ran out was the south line as laid down on the Roskruge map; that he then returned to the north center monument on the small limy hill and went west to the northwest corner, where he found a stake which he knew to be a corner of the Wasson survey, *unlike the one described on the Roskruge* map; that he searched north, east, south, and west of that stake for the monument described on the map, but found nothing; that he then went to the northeast corner and there found a Wasson stake, but not the monument described on the map, although he made diligent search for it in all directions; that he investigated the valley with reference to small hills from the San Pedro ranch down; that where the north center monument is the valley narrows considerably and that this hill is on the eastern edge of the hills on the west side of the river; that the whole country there is a limestone formation, and some 5 or 6 miles south the *mesa* or table-land runs out into the valley again and forms two or three small hills there; that the word "hill" in the original is "*loma*," and all these are "*lomas*," and that the word "hill" does not exactly translate "*loma*;" that there are similar hills south of the line along the San Pedro River; that the center or initial point is described as being a small hill in the valley, and that there is no such hill anywhere in the valley between the table-lands on both sides; that he did not go to the Bachata *cañon;* did not examine the San Pedro grant at all; that the Huachuca Mountains

lie west of the river, are probably 20 or 25 miles long, run a little north or west from where the boundary line crosses them, and at the west end are probably 10 or 15 miles wide; that the Mule Mountains are on the opposite side of the river and do not cross the boundary line, starting some 3 or 4 miles from it, the foothills *running down to the line*; that the east end of the Huachuca Mountains cross the line, the line running over a spur of the mountain; that that range does not have the same general tendency as the river, up and down, but run from the river, diverge toward the west from south to north; that the river runs a little west of north; that the mountains diverge more than the river does, from their southern end toward the west; that he located the north center monument from the Wasson and Roskruge maps, and had no other means of locating it; that he could not find the initial point described in the *expediente*, although he made special search for it; that he could not take any of the subpoints and work back from one to the other and locate the initial point; that if the 400 cords were run out from the north center monument they would not reach what is laid down on the Roskruge map as the north line of the San Pedro grant by at least 10 miles; that if the 4 leagues were run out from the north line of the San Pedro grant as laid down on this map they would not reach the north center monument, and that he could not take the *expediente* and go and locate the initial point and survey this grant. (R., 63–67.)

On cross-examination, Mr. Flipper testified that he

was accompanied in his investigation of this grant by Mr. Burnett and Mr. Haviland, and also by Mr. Herrick and another man; that the monument described by him as the United States boundary monument had "W. H. E., U. S." on the north side and the initials of the Mexican commissioner on the south side; that there are two such monuments, the south one being on the east side and the north one on the west side of the river, both built by the boundary commissions; that he did not go on the grant to survey it, but to find and identify the monuments if possible. (R., 67–76.)

On redirect examination, witness testified that in his travels over the country investigating land claims in Arizona he had never seen a monument built of stones and mortar by Mexican officials, and such monuments as he had seen are modern.

On recross-examination he testified that his reason for believing the monuments to be modern rests on the appearance of the stones in the monument. When a stone lies on the ground the upper side acquires a color different from that of the underside, and when such stones are removed and placed in a monument the fact that they had recently been placed there is apparent from the color of that side that had laid next to the ground, and that by "modern" he means ten or fifteen years, and certainly not prior to 1853. (R., 76.)

Max Marks was recalled for the purpose of identifying the photograph of the initial monument of the San Pedro grant (R., 77), as also was Douglass Snyder (R., 78–79).

GEORGE J. ROSKRUGE was recalled on behalf of the plaintiff to further identify the photograph of what he designates as the initial monument of the San Pedro grant, and says there were no cuttings or markings on any of the stones of that monument. The remainder of his testimony is with reference to the location of the mountains and Major Emory's survey of the international boundary line and the controversy between him and the Mexican commissioner resulting in the change of the monument, which the United States contends accounts for the second monument, which Roskruge and his confrères located as the north center monument of the San Pedro grant. (R., 79–84.)

THOMAS A. BORTON testified, on behalf of the plaintiff, that he resides at Tucson and has lived there since 1872; was employed in the surveyor-general's office in the years 1881 and 1882, and again in 1887. While so employed he was instructed to make the measurements in Cochise County for the boundary line. Witness had occasion to measure the distances between what is known as the town or location of Hereford, on the San Pedro River, and the boundary line, in January, 1887. The measurement was made by an odometer, and the distance between these two points was something over 7 miles by the road.

On cross-examination he states that he went there to locate the initial point of the San Pedro private land claim, BUT HE COULD NOT AND DID NOT LOCATE IT WITHIN THE UNITED STATES, and he had no authority to cross the line.

On redirect examination, he states, in answer to a question why he did not locate it, that he had a copy of the *expediente* there with him, but owing to the indefiniteness of the description of the calls of the grant it was impossible for him to locate the initial point where the claimants asserted it was in their petition for the preliminary survey and in the map filed by them showing the initial point; and it became necessary for the surveyor-general to send the witness to make an investigation to ascertain where the initial point was, and from this data he was unable to locate it. On recross-examination he states he was unable to locate it within the United States. (R., 84–85.)

Counsel for plaintiff then offered the documentary evidence as shown in the record.

Upon the testimony thus presented the Court of Private Land Claims on the 30th day of March, 1894, gave judgment in favor of the United States, holding that plaintiff's petition was invalid, rejected the claim, and dismissed the petition on the ground that the officers purporting to have made the grant were not authorized so to do, they being State officers and the title to said land being at said time vested in the National Government. The opinion of Mr. Justice Fuller rejecting the claim appears at record page 187.

An appeal was sued out by the plaintiff on August 22, 1894, and came on for hearing before this court on March 16, 1898, and was decided on May 31, 1898 (*Camou* v. *United States*, 171 U. S., 277). By that decision it was held by this court that the title papers

presented were made by a competent authority, and were therefore valid, and that the grant was entitled to confirmation to the amount of land paid for. The holding of the court was as follows:

> As for the reasons heretofore mentioned we are of opinion that a valid grant was made in this case, we think this arbitrary declaration by a temporary dictator was not potent to destroy the title. The decree of the Court of Private Land Claims must therefore be reversed. As shown by the statement of facts the survey of the land claimed in the petition is in excess of the 4 *sitios* granted and paid for. While the excess is not so great as in many cases, yet we think the ruling laid down in *Ely's Administrator* v. *United States ante*, 220, should control, and that this Government discharges its full duty under the treaty when it recognizes the land as valid to the amount paid for.

Turning to the Ely case, just referred to, it will be found that the court remanded said case with instructions as follows:

> In view of these considerations we are of opinion that this grant should be sustained to the amount of $1\frac{3}{4}$ *sitios*, and the judgment of the Court of Private Land Claims is reversed and the case remanded to that tribunal, with instructions to examine and decide whether there be sufficient facts to enable it to determine the true boundaries of the $1\frac{3}{4}$ *sitios*.

Applying the decision in the Ely case, as just set forth, to this case, it follows that the same was remanded

by this court for the purpose of "examining and deciding whether there be sufficient facts to enable the court below to determine the true boundaries of the 4 *sitios* granted." The mandate of this court was presented to the Court of Private Land Claims on January 31, 1899, whereupon the court admitted testimony presented by the claimant for the purpose of establishing the location of said 4 *sitios* within the survey presented by them on the original hearing. This testimony was, in brief, as below indicated.

There was presented a certified copy of the field notes and plat of a survey of this grant made by Solon M. Allis, under the direction of the surveyor-general of Arizona. (R., pp. 204–228–234.) This survey contained exactly 4 *sitios*, tied on the north to the limy hill claimed by plaintiffs as their north boundary, and continuing thence southward along the course of the river, with the uniform width of 1 league and of the length of 4 leagues, thus making the quantity of the 4 *sitios* mentioned in the title papers. The survey thus made by Allis leaves between its south boundary and the north boundary of the San Pedro grant, as claimed by plaintiff and established by Roskruge, an interval of over 2 miles.

The plaintiff also presented, after proof of the death of witness (R., pp. 214–215), the testimony of Francisco S. Leon and Pascual Cruz (R., pp. 234–235), to the effect that the ranch of San Rafael del Valle had been held in possession of Don Rafael Elias in time past; that he had much stock thereon, and that it was abandoned on account of the Apache Indians before

the time of the war with the United States. These witnesses also testified that, in their opinion, it was impossible for said Elias, with safety to himself and stock, to have held possession of said ranch between the date when he was driven off of the same and the date at which the Indians were suppressed by the American troops.

GEORGE J. ROSKRUGE, the principal witness for the plaintiff on the original hearing, was reintroduced on this further hearing (R., 205) and testified, in substance, that the San Pedro River runs through this grant in a northerly direction, and that said grant is located between the Mule Mountains on the east and the Huachuca Mountains on the west. Witness further testified that he had made a search for the center monument of the grant for two or three days, pursuant to data furnished him from the surveyor-general's office, but that on a reexamination of the *expediente* he failed to find any monument called for therein as the center monument on the San Rafael del Valle grant. Witness testified that, having ascertained the position of the limy hill, called for as the boundary on the north, and the north boundary of the San Pedro ranch, called for on the south, it is possible for him to fix the center point of the grant, and he does fix such center point at the point C on his map (R., pp. 206–236). such point C being the middle point of a line running from the said limy hill, as located by Roskruge, to a point on the San Pedro River at its intersection with the north boundary of the San Pedro grant, *as located by Roskruge.*

Roskruge further testified that this center point thus arbitrarily fixed by him is on the left bank of the San Pedro River, probably 200 or 300 feet from it, and that if, in making a survey of the valley lands along the valley, he desired to take a center for that survey it would ordinarily be placed as he placed it, to wit, midway between the north center of the grant and the south center thereof, and near the river. Witness further testified that, in looking for the center of the grant originally, as disclosed by his testimony on the first hearing (when he stated repeatedly his inability to ascertain the center of the grant), he was looking for "little mountains," because the copy of the *expediente* furnished him said the survey was begun from a point fixed as a center "where there were some little mountains." Witness further testified (R., p. 207) that if this was not correct and the center monument was instead near some "hills," which were natural objects answering to that call to the west of the arbitrary center as now fixed by him, to wit, some rolling hills. Witness testified that the center, as now fixed by him, was 33,604.5 feet from the north boundary as located by him and the same distance from the south boundary. As the title papers make the distance from the center north and south 200 cords, or 27,590 feet, it will thus be seen that the measurement from Roskruge's arbitrary center north and south to the natural object named in the title papers is 6,014.5 feet, or over a mile in excess of such distance named in the title papers. The map embodying this arbitrary center thus fixed

by Mr. Roskruge was tendered in evidence (R., p. 236). Mr. Roskruge also identified an additional map embracing exactly 4 *sitios* of land carved out of the 20,034.62 acres contained in his original survey, by cutting off a triangle of 701.4 acres on the west and a triangle of 192.99 acres on the north, and a parallelogram, 1,779.45 acres, just south of this last-named triangle. It seemed to be the purpose of this testimony to suggest to the court a tract of land for confirmation containing the exact area named in the title papers, by deducting from the area within the natural objects the difference of 2,673.84 acres contained in these three bodies cut off from the south and north. No reason appears in Roskruge's testimony or otherwise why such a deduction might not as well be made from the east or west of the grant as from the north. Roskruge further testified that the little hills which he had mentioned as being in the neighborhood of his center point were west thereof a distance of probably 1,000 or 1,500 feet (R., p. 210). On a subsequent examination he corrected his testimony (R., pp. 237–239) by stating that these hills were probably 2,700 or 3,000 feet, or a little over half a mile from his arbitrary center. He also testified that these hills were what he would call *lomas*. It is to be noted (R., pp. 89–97), that the Spanish is "*cerritos*," and that the center is stated by said title papers to be at a place where there are some small hills (*cerritos*) (R., p. 97). It can hardly be contended that *lomas* over half a mile from a given point can be construed as answering a call for *cerritos* at such point.

The fact that there was nothing exceptional about the existence of *lomas* in the vicinity of this arbitrary center fixed by Roskruge, will be noted further on in his testimony, and indeed is also shown in the field notes of Solom M. Allis, above referred to (R., p. 232), where in describing the arbitrary center fixed by him, which is over a mile north of the Roskruge center, he mentions that the same is near some little hills. On cross-examination (R., p. 210) Roskruge shows that running 200 cords south from the north boundary fixed by him and 200 cords north from the south boundary fixed by him, there exists between the termini of such lines a *hiatus* of 12,208.10 feet, or about 2¼ miles. He also calls attention to the fact that the 4 sitios as laid out by him is less than 100 cords in width (R., p. 211), although the title paper states that it is to be that amount. In regard to his method of locating his center point he says:

> Q. Then you arrived at your center point by taking a point midway between your two extreme points—the north line of the San Pedro ranch and the little hills?
>
> A. Yes, sir; that is the way I arrived at the center point.
>
> Q. You did not first find a center point and then undertake to run your survey out 200 cordeles each way, north and south, so as to get to the end monuments?
>
> A. No, sir.
>
> Q. This survey was made upon the basis of the correctness of the end monuments, irrespective of the center?

A. Yes, sir.

Q. If the survey was alleged to have been made from the center point to these points, and they were arrived at by measurement, and you would do so, you would not arrive at either one of these objects, assuming that this center point is correct?

A. No, sir.

Q. To arrive at the center you assumed that the north center monument, the limy hill, and the south center, the north line of the San Pedro, were correct, and you then measured back, and established your center point from these two subordinate points?

A. Yes, sir.

Q. And if they did not bring you back, what is the conclusion necessary?

A. Why, they made a mistake in their measurement.

Q. Or they did not measure it at all?

A. Yes, sir; or they did not measure it all.

Q. If, in identifying the particular 4 sitios of land that were bought and sold and advertised upon measurements from a center initial point, you can not find that point upon the ground itself, but have to go to the subordinate points and retrace measurements from them, it would leave a space in this case of over 2 miles between the ends of those measurements from the subordinate points?

A. Yes, sir.

Witness further testified (R., p. 212) that he, in his examination of this valley, went as far south as the San Pedro ranch or custom-house, which is about 6 or 7

miles south of the international boundary line. He further stated that the valley is formed of *mesa* land on both sides and rolling hills in some places (R., p. 213). Witness further testified that the San Pedro ranch or custom-house was located on the right bank of the San Pedro River, and that in his examination he believes he had a copy of the *expediente* of the San Pedro case (R., p. 213), which said *expediente* is found in record (p. 130).

The hearing of the case was resumed by the court on May 9, 1899, at which time Mr. Roskruge was recalled and identified certain photographs (R., p. 236), and was reexamined in one or two points. Among other things, he testified that he went on the summit of one of the little hills near his arbitrary center point, such hills being about half a mile west from said center, and that the height of one of these hills was about 42 feet, and that he was able to distinguish such hill from the surrounding country and apparently from the mountains by the fact that the mountain is a natural object which he would have to come down from if he wanted to get off of it. Witness further stated (R., p. 238) that there were some small hills on the west and east sides of the valley, and up and down the valley, and that they are all along the valley from up near the north boundary to the south boundary (R., p. 239). The attention of the witness was called to the fact that while he claimed that his inability to find the center of the grant on his first examination was due to the fact that his *expediente* called for "mountains" at or near the

center; as a matter of fact, on his first examination in the court he was asked absolutely nothing about mountains (R., p. 41), but was asked about hills. Referring to said previous examination (R., p. 41), it will be noted that witness was asked the following questions:

> Q. Now, let us go over the *expediente*. It says, in the presence of the interested party the measurement was begun at a place *where there were several small hills* [not mountains].
>
> A. Yes, sir.
>
> Q. Did you find that point?
>
> A. *That is the point I told you I did not find.*
>
> Q. You did not?
>
> A. No, sir.
>
> Q. Then, "continuing a south course, there were measured and counted 200 *cords*, the line terminating at the line of the ranch of San Pedro." Did you find the ranch of San Pedro near that line?
>
> A. I found the ranch of San Pedro was down in Mexico.

This concluded the testimony of witness Roskruge, and it will be noted that the only result of his testimony as bearing upon the matter of the center point was that he established such center point not primarily, but by bisecting a line connecting his natural object on the north boundary with his natural object on the south boundary, and that there is absolutely nothing about this center point thus arbitrarily determined to show that it was the original center point, the attempt to corroborate such arbitrary determination by showing the location of small hills half a mile west of such center

point, when the title papers call for hills at such point, being rendered nugatory by abundant proof in the record just quoted to the effect that such small hills are to be found on both sides of the valley, and up and down the same, through the entire length of the grant from north to south. It is respectfully submitted that if the presence of the small hills half a mile west of the Roskruge center is to be taken as indicative that the center was located as fixed by him, the existence of such hills at other points along the valley, as abundantly established by the testimony, is equally indicative that the center was originally located at such points.

With the exception of the title papers in the San Juan de las Boquillas y Nogales grant, tendered by the claimant (R., p. 241), and the title papers in the San Ignacio del Babocomari grant, tendered by the Government (R., p. 241), no further testimony was presented in this case, and it is respectfully submitted by the Government upon the record thus fully outlined that there was nothing adduced by claimant to show where the specific 4 *sitios* sold to Rafael Elias by the Mexican Government on the 25th day of December, 1832, were located.

BRIEF AND ARGUMENT.

The contention of the Government in this case is that this grant of 4 *sitios* is a mere float, being 4 *sitios* or 17,360.76 acres within exterior boundaries containing at the very least 20,034.62 acres, and that there being absolutely no means afforded of identifying where, within these exterior boundaries, such 4 *sitios* were

located. This is a tract that had not been located at the date of the Gadsden treaty, and is thus a grant claim which is specifically denounced as not entitled to recognition by section 6 of that treaty, reading as follows:

> No grants of land within the territory ceded by the first article of this treaty, bearing date subsequent to the 25th day of September, when the minister and subscriber to this treaty on the part of the United States proposed to the Government of Mexico to terminate the question of boundaries, will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico. (10 Stats., 1031–1035.)

The question of law thus presented is equally applicable whether the tract of land sold be considered as a float within the area developed by the Roskruge survey, or as a float within the larger area which the Government contends was included within the original survey; but as the larger area serves to emphasize the lack of location which characterized this grant at the date of the treaty, a few reasons will be suggested bearing on the Government contention as to the extent of this original survey.

For the purpose of this case it may be assumed that the limy hill fixed by Roskruge as the north boundary of the survey executed by the Mexican Government is correct, and no attack was made by the Government on the trial of the case upon his side lines, the same being

within the measurement stated by the Mexican surveyor. The question of the extent, therefore, of the land within which the 4 *sitios* granted is located hinges on the location of the south call of the title papers, to wit, "the *limits of* the San Pedro ranch." (R., p. 97.) For the purpose of establishing such boundary claimants put in evidence the San Pedro title papers. (R., p. 154 et seq.) That document is exceedingly vague and indefinite, and its construction and the location of the land therein mentioned have been the subject of controversy not only before the Court of Private Land Claims but also the tribunals of Mexico, as will be fully noticed by the court in the hearing of the case of the *Reloj Cattle Company* v. *United States*, No. 204 on the docket of the present term, that being an appeal from a decree of rejection entered by the Court of Private Land Claims in a case praying for the confirmation of said San Pedro grant. An examination of the title papers, however, leads to the conclusion that the north call of that grant, and therefore the south boundary of the grant now under consideration, was the Bachata Cañada or gulch (R., p. 161), and a good deal of the testimony presented by the claimants in this case was for the purpose of establishing said cañada and a monument of stone thereon, and thus fixing the south boundary of the San Rafael del Valle grant. It is not believed by the Government that said Bachata Cañada is located as alleged by the plaintiff, or that the north boundary of the San Pedro grant is located at the point which plaintiff claims is the Bachata Cañada. The only witnesses produced

by claimants as to the location of this cañada were Roskruge (R., p. 33), Douglass Snyder (R., p. 54), and Max Marks (R., p. 56), none of whom pretended to know of their own knowledge or from reputation in the country where this cañada was, or that the name of the cañada which they adopted was the Cañada Bachata. The most that these persons testified to was that a couple of Mexicans living at Santa Cruz, Concepcion Elias and Antonio Gonzales, showed them this place ast he Bachata Cañada. Outside of what these two men told them the witnesses had absolutely no knowledge of such place or its name. It is shown by the record that both of these Mexicans were living at the date of the trial (R., p. 39), and neither were introduced as witnesses on behalf of claimant. It is not believed that it is sufficient evidence of the existence of natural objects to introduce witnesses otherwise entirely ignorant of the country to testify that two other persons, both of them alive and competent to testify, had told them that such place was known by the name alleged, whereas in this case, the question at issue was the location of this grant, claimant could not preclude cross-examination as to the existence of a natural object by failing to produce the witnesses having personal knowledge of such natural object, and presenting instead of the direct testimony of such witnesses a statement of third parties as to what these witnesses had told them. It is respectfully submitted by the Government, therefore, that all the testimony of claimant attempting to establish the location of the Cañada Bachata by hearsay

was irrelevant and incompetent and should be ignored by the court. As unreliable was the attempt of Roskruge to fix the location of this San Pedro grant by reference to the other natural objects named in the *expediente* of that grant. It will be noted that he proceeded on the assumption that that grant was laid off by the Mexican surveyor in 1831, from a center point, an error, it may be remarked, into which the claimant of that grant also fell, as will be fully discussed before the court in connection with the San Pedro gran case, No. 204, October term, 1900, above referred to. An illustration of Roskruge's error in this matter is shown at record page 35, where he says: "I went to a monument which I believed to be the center of the grant of San Pedro." An intelligent examination of the *expediente* of that grant (R., p. 60) will disclose absolutely the fact that said grant was not measured by lines running a given direction from a center point, but was run by exteriors, beginning at a point on the perimeter and running by four courses around the tract and returning to such initial point. Mr. Roskruge's assumption in laying off the San Pedro grant from a center, as testified to by him, proceeds on an erroneous basis, which vitiates his whole survey and undermines his theory as to the location of that grant. Further evidence of Mr. Roskruge's error in this location is afforded (R., p. 35) by his reference to "old ruins, which answered the description called for in the [San Pedro] *expediente* as going toward the northeast." It is sufficient to say

that there is no call in that *expediente* for ruins, and that so far from there being ruins mentioned in the grant, the place therein referred to (R., p. 160) is still existant, and is known as the ranch of San Pedro, and is some 8 or 10 miles south of the international boundary. (R., pp. 41–2.) Mr. Roskruge (R., p. 35) also testified: "I found a monument there, and it answered the description of little hills, and they were the only little hills I found in the whole valley that would answer the description. Then I ran over and found a stony hill which is called for in the San Pedro *expediente*. I am running out the San Pedro *expediente* from the center northeast. I then went to the Bachata Cañon, a point in the San Pedro." The inaccuracy of Mr. Roskruge's theory is further developed by this quotation when compared with the *expediente*, which contains no reference whatever in this course to little hills or to a stony hill. Likewise (R., p. 36) Mr. Roskruge seems to have hunted for a "brushy place" mentioned in the *expediente*, but he testifies that "as it was all brush there we could not find anything, but we were certain we were on the right track." Mr. Roskruge's confidence that he was on the right track, in spite of his inability to find plain landmarks named in the *expediente*, evidences a willingness to establish the San Pedro grant on most unsufficient data that is even more forcibly illustrated elsewhere in the record. In connection with this mention of the "brushy place" it may be proper to call attention to the fact that the *expediente* says nothing

whatever about a brushy place, but, on the contrary, refers to the *Mesa Chinosa*, this being a mesa covered with the particular kind of bush with a curly foliage.

Mr. Roskruge having, on the statement of two men, who were not produced at the trial, found the Bachata Cañada and a pile of stones thereon—"an ordinary pile of stones" (R., p. 48)—proceeds to run west from this pile of stones, which he so confidently constitutes the north limit of the San Pedro ranch, for the purpose of encountering other monuments on that north boundary. It is significant that when he ran due west from said monument, to quote his own words (R., p. 38), he "went out and searched on the plain there, *but could not find a single thing.*" If he had, in fact, correctly identified the north boundary of the San Pedro ranch, it is very strange that he was unable to find, on pursuing that boundary westward, a single monument or the other call, either natural or artificial, on the same. A further inaccuracy of his theory is demonstrated (R., 44) when he testifies that the only little hills that he could find "were the ones that were called for in the San Pedro grant, the second course from the ford." The *expediente* contains no such call.

The testimony for claimant therefore affording no reliable basis for the location of the San Pedro grant, we next come to the testimony presented by the Government. From this it will be noted (R., p. 52) that Mr. Bonillas, a witness presented on behalf of claimant, retraced the San Pedro grant based upon a survey made thereof, and which retracement he testified to be correct, and as the result of his work on that survey

he testified (R., p. 52) that the grant as located by the former survey and relocated by him is entirely within the Republic of Mexico. The map showing Mr. Bonillas's resurvey is found at page 246 of the record. Mr. Bonillas also testified, in response to a question as to the initial center monument of the San Pedro grant, that "there is not supposed to be any monument there at all." This corroborates fully the Government's contention that this was a grant originally surveyed by exterior lines, and at the same time demonstrates the fallacy of Mr. Roskruge's survey, which is based upon the theory of a center point. The manner in which this San Pedro grant was originally surveyed is not more fully discussed here for the reason that it will constitute the subject-matter of discussion in the San Pedro case, No. 204, which, it is anticipated, will be under advisement by the court along with the present case.

Another witness for the Government on this subject, although presented on behalf of claimant, was Mr. Thomas A. Borton, who testified (R., p. 35) that he went down to locate the initial point of the San Pedro private land claim under instructions from the surveyor-general of Arizona, and could not locate it within the United States, it being within the Republic of Mexico.

In the transcript of the record in the San Pedro case, No. 204, page 178, is found the testimony of Angel Elias, which it is stipulated (same record, p. 179) should be used as testimony in the case now at bar. Said testimony was omitted from the present transcript by mistake, but as it is before the court in the record just

mentioned, along with said stipulation, it seems proper to call the court's attention to a portion thereof. In that record Elias was asked as to the ranch Palominos, and he testified that it was in Arizona, near the boundary line. He was apparently unable to state its exact distance from the boundary, but that is supplied in the present record by the testimony of Mr. Roskruge (R., p. 213) to the effect that Palominos was a mile or a mile and a half north of the international boundary line. Recurring to the testimony of Elias (San Pedro record, p. 193) it will be noted that Elias testified that what is called the San Rafael del Valle grant extends from Palominos on the south to Charleston on the north, and that he knew it was Palominos, but "they call it San Rafael del Valle," and he supposed it was the same place. This witness further testified that he had always understood, since his first acquaintance of this place, in 1850, that what is now San Rafael del Valle was the same as Palominos. Thus Elias's testimony fixes the south boundary of the San Rafael del Valle within a mile or a mile and a half of the international boundary line, and thus 10 miles or more south of the south boundary as fixed by Roskruge.

The effect of all this testimony is to show that the original survey of the San Rafael del Valle grant extended north and south 20 miles or more, from the limy hill on the north practically to what is now the international boundary line on the south, and that under the guise of locating a tract of land 4 leagues, or about 10 miles, in length, the original surveyor,

either because of incompetency or because, as Roskruge admits (R., p. 212), he may not have made any survey at all, delineated for this grant a tract of land upward of 20 miles in length.

The question now submitted to the court, therefore, is where within a tract of land 20 miles in length a tract 10 miles in length shall be placed. This is upon the Government's theory as to where the north boundary of the San Pedro grant was located; but acceding, for the sake of argument, to claimant's theory as to the location of that boundary, the problem is hardly less serious, for we then have presented a tract 10 miles in length to be located within a tract 12 miles in length.

It may be readily conceded that an arbitrary location might be made by this court, as was done by the court below, giving the claimant 4 square leagues of land included within the outboundaries; but it is not believed that this court will, in the desire to give parties a quantity of land equal to what their predecessors in title purchased from the Mexican Government, overlook the plain limitation imposed upon the Court of Private Land Claims in passing upon this character of title. This involves a brief consideration of what that limitation is. The wording of such limitation has been already set forth in quoting above the sixth article of the Gadsden treaty, to the effect that grants not duly located at the date of the treaty are debarred from recognition at the hands of the United States. It is to be noted that said limitation in the treaty applies not to invalid but to valid claims—claims which would but

for this provision be entitled to recognition. There must have been some purpose in ingrafting this provision upon the Gadsden treaty. The United States had but five years previously, in dealing with the Mexican Government, concluded a treaty by which a vast area of land was transferred from Mexican to American sovereignty. The Gadsden treaty adopted most of the provisions of the treaty of Guadalupe Hidalgo by reference, but in dealing with the matter of grants an addition was made to the former treaty, as above set forth. What was the purpose of that addition?

There was no requirement in the treaty of Guadalupe Hidalgo that the lands granted should be located prior to the treaty, the result of which was that large masses of land, particularly in California, were reserved from settlement and sale by reason of being within the exterior boundaries of some Spanish or Mexican land grant, and to guard against the repetition of such litigations this provision was inserted in the treaty of 1853. A comparison of the provisions of the two treaties will clearly show this distinctive difference. It is a universal rule of construction of all contracts and agreements, of particular force when construing the solemn acts of two sovereign nations, that every sentence, every phrase, and every word contained in the instrument shall be given some meaning, if possible. Particularly is this the case where two instruments of smaller character have been made between the two parties, one of which differs from the other. In such case courts must conclusively presume that for some good reason such a difference was made, and must give force and effect to

the difference, if possible. In this case the only difference between the two treaties is the word "located," and in compliance with the well-settled rules of construction it is the duty of this court to give that word some meaning. Now, what can it mean, unless it applies to a grant like this? It can not apply to a general float—that is to say, to a grant of indefinite quantity, or grants with the right to locate anywhere—for such grants have been universally held to be void by this court without any such words in the treaty; and there is no class of grants to which this word can apply except to that most common class of grants of specified quantity of land within exterior boundaries containing a larger quantity. If, then, as has already been said, this be a grant of 4 *sitios* of land to be located within exterior boundaries containing several thousand acres in excess of that quantity, or if it be a grant fixed by the title papers as 10 miles in length to be located within a tract over 12 miles in length, and the same was by the terms of the treaty to be located before it could be recognized by this Government, and if, in fact, it had not been located prior to 1853, these facts make it unlawful for the Court of Private Land Claims to confirm this grant, and this court is no less bound by the provision creating the court from which this appeal is taken.

The first of these land cases from Arizona to come before this court for consideration on the question of quantity was one which appears under the name of *Cameron* v. *United States* (148 U. S., 301), and which appears on appeal in another proceeding as Nos. 351 and

379 on the dockets of the present term. In that case the facts were and are that the land granted amounted to 4 sitios, the precise quantity involved in this case, but the natural objects set out as the limits of the grant contained many thousand acres in excess of said quantity, and the contention was that the claimants of that tract had claim or color of title to said natural objects. This court, in deciding the case in 1892, left to the Court of Private Land Claims, which had just been created by Congress, the question of the true extent of that grant under the title papers, and the appeal involving that grant and on the docket of the present term as *ibid.*, is taken by claimants from the decision of the Court of Private Land Claims, limiting the confirmation to 4 sitios. This court, however, in passing upon the title paper there involved, says:

> While a grant of 4 leagues in the place called San Rafael de la Zanja standing alone would appear to have been a grant of a certain quantity of land, when it appears by the same instrument that the limits of the grant were to be designated by landmarks of stone and mortar, that such designation was actually made, and that juridical possession of the land was delivered in pursuance thereof, it is at least open to doubt whether it does not fall within the class of concessions by specific boundaries as these grants are distinguished in *United States* v. *McLaughlin* (127 U. S., 428). *Under the view taken by the court below* that the grant was only 4 square leagues of land it was evidently a mere float and defendant would have no color of title to any

specific land until the same was designated, and would have no authority to monument and fence on any part of the tract.

As the court below and as this court on the former appeal limited the grant now under consideration to 4 sitios, and as the monuments inclose several thousand acres more than 4 sitios, this case is brought precisely within the rule announced by this court in the Cameron case, and just quoted, to wit, that this grant is a mere float and is precisely of the character of grant disclosed in the *McLaughlin case* (127 U. S., 428), and in the *Freemont case* (17 How., 542). The nature of a float is further discussed in the cases cited and in *Cameron* v. *United States* (148 U. S., 309); also in *United States* v. *Armijo* (5 Wall., 445), *Miller* v. *Dale* (92 U. S., 473), *Carpentier* v. *Montgomery* (13 Wall., 480), *Hornsby* v. *United States* (10 Wall., 232), *Snyder* v. *Sickles* (98 U. S., 203).

In the McLaughlin and Freemont cases, especially, the character of title here asserted is discussed, and in these and the other cases above referred to is pointed out the fact that a Mexican grant of quantity located within exterior boundaries containing a greater quantity does not until located take precedence over a grant made subsequently within the same outboundaries but located first.

The identity of the character of title here asserted with those known in California cases in which this court held, as above set forth, that a grant under the conditions developed by this record was a float, is made quite

evident by the more recent case of *Ainsa* v. *United States* (161 U. S., 208), involving the Nogales grant. That case is most instructive as showing the attitude of the Mexican Government toward the form of title here asserted, and it plainly indicates, as does the San Pedro case (*Reloj Cattle Company* v. *United States*, No. 204, this term); the Agua Prieta case (*Elg's administrator* v. *United States*, No. 250, this term), and the San Rafael de la Zanja case (*Christie* v. *United States*, No. 379, this term), that the owners of said grant have no right of any character in the tract of land surveyed to them beyond the exact quantity, and that as to such quantity the Government reserved the right to locate the same within the exterior boundaries, granting the surplus, when ascertained, on application of any party, to such applicant. Thus in the Nogales case (*Ainsa* v. *United States*, 161 U. S., 208), the title papers were based upon a resurvey made in 1841 of a grant made ninety-nine years previous thereto, and by which proceeding the *cabida legal* was set aside to the descendants of the original grantee and the surplus within the outboundaries sold to the predecessors in title of Ainsa's intestate. This was exactly the condition of affairs in the case of the California floats, as developed by the cases above cited, except that in those cases the Government did not locate any grant by quantity, already made within a larger area, prior to making a second grant within the same area; whereas in the Arizona cases, situate in the then State of Sonora, such location was made prior and preparatory to the sale of the surplus or *demasias*

within such exterior boundaries. The system prevailing in Mexico is evidenced by the Sonora State law or decree No. 51, of May 12, 1835, section 2 of which is quoted in the *Ainsa case* (161 U. S., 226), and the whole of that law, which is brief, is at this point inserted, and is as follows:

Law 51, State of Sonora.

The constitutional congress of the State of Sonora decrees as follows:

ARTICLE 1. Those who have acquired property in lands of the State by lawful title are holders in good faith, even when they have lost that document, for they are entitled to revalidate it upon proof of the incident that may have occurred.

ART. 2. So also are those who, under the boundaries set out in their proceedings of survey, occupy any overplus of lands, to which they are always entitled even when the overplus is shown, without other obligation than to pay for the excess according to the quality of the land and at the price that governed when it was surveyed and appraised; and only in case the holder does not need the overplus, or when this latter is very expensive, in the opinion of the government, based on the report of the treasury, shall it be adjudicated to whoever denounces or applies for it, who shall also be responsible for the resurvey if no excess should be found. In lands measured by estimation, excess or deficiencies shall not be so considered when they do not exceed half a *sitio*.

ART. 3. The right of lawful possession is not

lost because the land is deserted or abandoned, provided it is caused by the hostilities or incursions of the enemy as long as they last.

ART. 4. They are likewise holders in good faith who have obtained land by legal tradition. Those are reported as such who have paid into the depositories of the public treasury the proper value thereof, and likewise all those who prove occupation in good faith, which must be respected even when the dominion of the possession is afterwards adjudicated to another person by disposition of the laws that govern in the matter.

ART. 5. In all the cases specified in the foregoing articles, and in others of like nature that occur, when occupation in good faith is shown, the holders have the right to dispose of their properties, or to be indemnified by new occupants of the land for the essential improvements they may have made thereon. This shall be done by just appraisement by good and impartial men and by a third in discord, appointed by the parties and bound by an oath before the local authorities, under which understanding the bidders for the land denounced by virtue of decree No. 10, of May 30, 1834, shall enter the bidding.

ART. 6. All who have arbitrarily occupied or occupy lands belonging to this State are reputed holders in bad faith, as are also those who, having allowed the various extensions of time given for legalizing their possessions to pass, have not paid their proper value into the treasury in time, and still continue to defraud the

State of its dues, with malicious and culpable dissimulation. Upon proof of such reprehensible conduct not only do the holders in bad faith become liable to lose the lands and improvements they have made, but they shall thereafter be liable, besides, to a rental of 5 per cent of the value of the land for each year of arbitrary occupation.

Therefore I order it printed, published, circulated, and duly complied with.

Arizpe, May 12, 1835.

IGNACIO DE BUSTAMANTE.

JOSÉ MARIA FELIX,
Chief Clerk.

It will be noted that by the provisions of that law an excess of less than half a *sitio* is ignored in considering *demasias*, where land is measured by estimation, so that owners of land so measured within outboundaries containing not more than a half *sitio* above the area paid for, were not required to have a new survey made, but were considered by virtue of their ownership of the area paid for, or *cabida legal;* also the owners of the surveyed area, or *cabida total.*

The position here insisted upon by the United States was clearly recognized by this court in the *Ainsa case* (161 U. S., 221), when, speaking through Chief Justice Fuller, it said:

> Grants previous to the cession, which have not been located, are by the terms of the latter treaty not to be respected or considered as obligatory, as a matter of right, whatever the United States might see fit to do as matter of

> grace, under particular circumstances. And grants which have not been located would seem manifestly to be grants of a specific quantity of land within exterior boundaries containing a larger quantity.

The holding of the court in that case appears in the second headnote as follows:

> The grant which the plaintiff in error claims was a grant of a specific quantity of land, to wit, 7½ sitios and 2 scant caballerios within exterior boundaries, and not a grant of the entire 18 leagues contained within those exterior boundaries; and as location was a prerequisite to any action by the Court of Private Land Claims, and as the grant had not been located at the date of the Gadsden treaty, it can not be confirmed.

Making a change in figures appropriate to the difference in records, the principle above quoted from the Nogales case is applicable to and conclusive of the present case. If the Nogales grant was denied recognition because it was 7 sitios floating within 18, no sound reason can be given why the present grant must not be denied recognition when it develops that it is 4 sitios floating within exterior boundaries containing about 3,000 acres in excess thereof, according to plaintiff's contention, and is 4 sitios floating within two or three times that number of sitios, according to the Government's contention. It is difficult to see, if the Nogales decision is to be adhered to, how this court can adjudge the San Rafael del Valle grant to have

been located when at the date of the treaty it was good for a strip of land 10 miles in length floating within a strip, according to the Government's contention, over 20 miles in length, and according to claimant's admission over 12 miles in length.

It is assumed, however, that it will be contended by claimant that the case of *Ely* v. *United States* (171 U. S., 220) overrules the Nogales case, or at least so limits it that it has not the effect just ascribed to it. This involves a brief consideration of the Ely case. In that case it will be noted that while this court holds that it would be unnecessarily limiting the powers of the Court of Private Land Claims to hold that it is powerless to act when a tract was granted within outboundaries, it was then passing upon a grant with a well-defined center point, and that even in remanding the case for further consideration it did so with directions to the court below to inquire, and if the court below found sufficient reasons for determining "*the true boundaries of the tract that was granted*," the court should sustain the grant to the amount of $1\frac{3}{4}$ sitios actually sold. This court did not remand that case with directions arbitrarily to fix the quantity in any portion of the tract inclosed within the outboundaries, but with directions to examine and decide whether there were sufficient facts to enable it to determine the "*true boundaries of the one and three-quarters sitios*." The direction, therefore, was not to ascertain the boundaries of the large tract, but to determine the *boundaries* of the smaller tract, the exact quantity sold. This court has never held that it

was within the power of the Court of Private Land Claims arbitrarily to locate the quantity sold anywhere it pleased within the outboundaries, but it held in Ely's case that the court must have some basis for such location, and such facts before it supporting that location, as will justify it in concluding that the land thus located was the specific tract originally sold. In deciding the Ely case Mr. Justice Brewer is careful to say that the court does not "anticipate all the questions that may arise," but in that opinion, speaking for the court, he does suggest two or three proper bases which may support a finding by the court of the location of the specific tract sold. Among these is the existence of a definite center point from which the measurements were originally made, and which by reducing proportionately the excessive measurements in each direction to correspond to the exact measurement stated in the *expediente*, will fix the precise tract, the sale of which was contemplated between the parties at the time the money was paid. This, it is to be observed, is not locating the tract, but declaring its location. It is not accomplishing now, fifty years after the treaty, a location of the grant, but is declaring what that location was at the date of the grant. It is not locating, but is simply declaratory of a location. It is thus strictly within the terms of the treaty, since it is not within the bar of that section of the treaty precluding a present location. Likewise, Mr. Justice Brewer suggests that the "location of the waterway or the configuration of the ground may be such as to enable a

court of equity to determine *exactly* what was intended to pass under the grant." It is entirely clear that by that suggestion this court did not intend to permit an arbitrary location at the present time, but that there must be something which will enable the court to tell "exactly what was intended to pass." If any 4 sitios within a greater area were necessary, why the word "exactly?" If the court is permitted now arbitrarily to locate any 4 sitios and declare that such 4 sitios are to belong to claimant by virtue of his title paper, why the words "intended to pass?" The whole theory, therefore, underlying the decision in the Ely case is a location made previous to the treaty and an ascertainment by the court, upon sufficient proof of that location. It is not believed that the Ely case, when construed with the Nogales case, can for a moment be considered as justifying the Court of Private Land Claims in making a location of a grant unless proceeding on sufficient proof that that location covers the specific sitios sold and paid for by the grantee and that such location is "exactly the true boundaries of what was intended to pass under the grant."

This brings us to the final proposition as to whether there is anything in the record to justify the location declared by the Court of Private Land Claims in this case; or, in other words, is there in the record anything to show that the 4 sitios described in its decree were the specific 4 sitios sold to Rafael Elias? The only data before the court was a north and south boundary distant over 12 miles apart. Between these

two points was to be located a tract of land 4 leagues, or about 10 miles, in length. There was no center point established, as has been fully pointed out above in discussing the testimony, so that the controlling feature of the Ely case is absent from this record. There is nothing in the configuration of the grant, as suggested in the Ely case, to show whether these 4 sitios were located at the north end or the south end of the tract, or in the center thereof. The water course affords no basis, as suggested in the Ely case, for the reason that it runs from the north boundary to the south boundary, as fixed by Roskruge, and 15 miles or more farther south, and thus beyond the south boundary contended for by the Government. Consequently, 4 sitios placed at any point between the north and south boundaries equally responds to the terms of the *expediente*. It is not believed that the claimant can point out a single reason why a location of this grant adjacent to the limy hill on the north, as, indeed, it was placed by Solon M. Allis (R., p. 234), would not as fully respond to the terms of the title papers as the location made by the court, or why 4 sitios established immediately adjoining the south boundary fixed by Roskruge would not correspond as fully to the terms of the *expediente* as the location made by the court; or why 4 sitios, beginning at any other point, between the north and south boundaries, would not as fully correspond to the *expediente* as the court's location. Confessedly, there is a difference of over 2 miles between the measurement from north to south stated in the *expediente*

and what is shown on the ground to be the distance between the north and south boundaries. An initial point might be placed at each one of the 10,560 feet in such 2 miles, and each one of such locations of the 4 sitios would as fully correspond with the *expediente* as does the court's location. It is not known upon what theory the court selected the middle point of the line adjoining the north and south boundaries as the proper initial point. Such a location may have been based upon the theory that the original surveyor of this grant, if it was surveyed, made exactly the same error in running north from his now unknown center point as he did in running south therefrom, which is an entirely arbitrary assumption; and if, as was often the case in these grants, no survey at all was made, but the description was framed by a surveyor miles away, at the capital of the State, upon a description of the country given him by the claimants, this location is even more arbitrary.

It is not believed that it was the intention of this court to indicate by the Ely case that a location could be made of the grant now, but that all the court below could do under the terms of the act of its establishment and the treaties, which it administers, is to declare, upon sufficient proof, what was such location.

It is respectfully submitted that in this case there was no such sufficient proof and that this case should be reversed with directions to enter a decree rejecting this grant for lack of location under the provisions of

section 6 of the Gadsden treaty, as interpreted in the case of *Ainsa* v. *United States*, above quoted.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

WILLIAM H. POPE,
Special Assistant to the Attorney-General.

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No. 229. 35
Brf. of Herring & Ford for Appellee
FILED
FEB 6 1901

Filed Feb. 6, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 229.

THE UNITED STATES, APPELLANT,

vs.

JUAN PEDRO CAMOU.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT OF THE CASE AND ARGUMENT FOR APPELLEE.

WILLIAM HERRING,
ROCHESTER FORD,
Attorneys for Appellee.

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STATEMENT OF THE CASE AND ARGUMENT FOR APPELLEE.

This case was once before this court (171 U. S., 277), and the validity of the grant settled. It appeared, however, that the land claimed in the petition was slightly in excess of the four sitios which, as this court held, the grant conveyed. The amount of land actually included within the survey made by the Mexican authorities is 20,034.62 acres. Four sitios would be either 17,353.85 acres, or, according to the figures given in U. S. *vs.* Perot, 98 U. S., 428, 17,361.10 acres.

The lower court, by its decree (Rec., p. 273), located within what are termed the exterior boundaries of the grant a tract containing four square leagues, or 17,474.93 acres.

This was done strictly in accordance with the principle announced by this court in Ely *vs.* U. S., 171 U. S., 220, 241, where, referring to what was termed excess, it was said: "If the out-boundaries disclose a square or any rectangular figure, the excess of area suggests simply a carelessness of measurement, and can be corrected by a proportionate deduction in each direction."

The center of the grant (Rec., p. 97) was "at a place where there were some small hills." From this there were measured and counted to the south 200 cords, which ended at the limits of the San Pedro ranch, the monument of which was standing at the time, and which was taken as a common monument between the two grants. From the center 200 cords were measured and counted towards the north, which ended upon the valley where there is a small, rising, calcareous knoll. Returning to the center, there were measured and counted towards the east 50 cords, which ended upon the valley and fronting the Mule mountains. Returning to the center, 50 cords were measured and counted towards the west, which ended upon the same valley, fronting towards the Huachuca mountains. 100 cords were measured from the extremities of the lines running north and south, so as to square the land, and heaps of stones as signs for monuments were placed at the ends of the various measurements.

The proof does not disclose any ambiguity as to the location of this tract of land. The limy peak referred to as the termination of the line run to the north was identified by all the witnesses. Mr. George J. Roskruge, who had lived in Ari-

zona 22 years, and for 20 years had been in the business of surveying and civil engineering (Rec., p. 33), testified (p. 34) that he "found a post in a monument on the summit of a limy hill, which was the north center of the grant as called for in the expediente, and there was no other limy hill in the whole neighborhood. I never saw anything like it in my life before. It is a very peculiar formation. It looked like a lot of burnt lime—calcareous, or whatever you call it. The whole top was covered with a lot of lime formation like cinders. * * * This is the most curious looking hill you ever saw, and there is nothing like it in the whole country" (pp. 41, 207).

Mr. H. O. Flipper, a witness for the government, also identified this monument. He testified (p. 65): "We then came back to the north center monument, on the little limy hill, and went west to the northwest corner."

Mr. Roskruge further testified (pp. 35, 56) that as the south boundary he identified the monuments of the San Pedro grant. As to this he was not contradicted, Mr. Flipper testifying (p. 66) that he "did not examine the San Pedro grant at all." Mr. Flipper further testified (p. 71) that "the north line of the San Pedro grant is north of Hereford," a point which is shown on the map facing page 180 of the record.

The central point is stated by the expediente to be the middle of a line of 100 cords, one end of which fronts the Mule mountains on the east, and the other the Huachuca mountains on the west. It was shown (p. 66) that the Mule mountains do not extend south of the international boundary line, and that the east end of the Huachuca mountains crosses

the line slightly. These Huachuca mountains appear on the map facing page 180.

The location of the monuments on the north line of the San Pedro grant was testified to also by the witnesses Douglass Snyder and Max Marks (pp. 54, 56).

On the second trial of this case Mr. Roskruge stated (pp. 205, 207) that when first looking for the center monument he had a copy of the expediente, which incorrectly stated that "the survey was begun from a point fixed as a center where there was some small mountains," and that he was looking for little mountains, but did not find them. He testified (p. 207) that in the vicinity of the center, as now fixed by him upon the map offered in evidence (facing p. 236), there were natural objects, small rolling hills, answering to the call for the center, and he further testified (p. 211) that he arrived at the central point by taking a point midway between the two extreme points—the north line of the San Pedro ranch and the limy hill.

The lower court, as above stated, by its decree adopted a parallelogram which made a proportionate reduction in each direction from the center. This is either exactly or almost exactly in accordance with the preliminary survey of this claim, which had been made as early as the year 1880 by the surveyor general of Arizona, a copy of which preliminary survey faces page 234 of the record.

We are unable to see how the decree is objectionable in any respect. It seems to conform exactly to the rule laid down by this court, and we submit that it should be affirmed.

WILLIAM HERRING,
ROCHESTER FORD,
Attorneys for Appellee.

Supreme Court of the United States.

No. 35.—October Term, 1901.

The United States, Appellant, vs. Juan Pedro Camou. } Appeal from the Court of Private Land Claims.

[March 17, 1902.]

In December, 1891, Juan Pedro Camou filed a petition in the Court of Private Land Claims, praying to have confirmed to him a certain tract of land situated in the county of Cochise, Territory of Arizona, known and designated as the San Rafael del Valle grant. Subsequent proceedings resulted in a trial and a decree in favor of the government, adjudging petitioner's claim and title invalid, and dismissing the petition. The case was then brought by appeal to this court, where the decree of the Court of Private Land Claims was reversed and the case remanded for further proceedings. (171 U. S. 277.)

Subsequently further proceedings were had in the Court of Private Land Claims in pursuance of the mandate of this court, resulting, on June 2, 1899, in a decree confirming the petitioner's title to 17,474.93 acres. From this decree of confirmation an appeal was allowed to this court.

Mr. Justice Shiras delivered the opinion of the Court.

When this cause was before us, in 171 U. S. 277, the validity of the claim was, upon full consideration, upheld. It was, however, held that the recovery should be restricted to the land claimed in the petition and paid for, and as it was shown that the survey was in excess of the land granted and paid for, the cause was remanded to the Court of Private Land Claims for further proceedings which resulted, as shown by this record, in a final decree of confirmation, establishing the boundaries of the grant, and finding it to contain four sitios, or 17,474.93 acres.

The contention made on behalf of the government, in this appeal, is that this grant of four sitios was a mere float within exterior boundaries containing a larger tract; that there were no means afforded of identifying where, within those exterior boundaries, such four sitios were located; that accordingly, as matter of law, prescribed in the sixth section of the Gadsden treaty, the tract cannot be said to have been located, and hence the grant must be held to be invalid.

It may well be doubted whether, even if this contention were well founded, it can be urged at this stage of the controversy.

When the case was originally tried in the Court of Private Land Claims, and subsequently was heard on appeal in this court, the principal contention on the part of the government was that the State of Sonora had no power to make a grant of public lands, and hence that the grant in question, although made in the name and by the proper officers of that State, was invalid. The subject was fully considered by this court, and it was held that the several States of the Republic of Mexico, of which Sonora was one, had, at the time when the transaction in question took place, authority to make sales of vacant public lands within their limits.

The government further contended that this and similar grants by the separate States had been annulled by certain decrees of Santa Anna, when acting as dictator of Mexico, and that, as the government of the United States had recognized Santa Anna, in purchasing the territory covered by the Gadsden treaty, the courts of the United States must recognize, when dealing with personal rights existing in the ceded territory, his declarations or decrees in respect to titles, as authoritative. But this view of the legal effect of the decrees of Santa Anna upon the private rights of residents within the ceded territory was not accepted by this court, and, for reasons given in the opinion of Mr. Justice Brewer, it was held that, as the grant made by the State of Sonora was valid when made, it was not destroyed by the arbitrary decree of a temporary dictator.

As, however, it appeared that the survey of the land claimed in the petition was in excess of the four sitios granted and paid for, the court applied the rule laid down in *Ely's Administrator* v. *United States*, (171 U. S. 220,) that where there is a valid grant for a certain number of acres within the outboundaries of a larger tract, the Court of Private Land Claims may inquire, and, if it finds sufficient reasons for determining the true boundaries of the tract that was granted, it can so prescribe them, and sustain the claim to that extent.

Upon this second appeal we have only to consider whether the Court of Private Land Claims reached its final decree in due pursuance of the previous opinion and mandate of this court. The decision there made is the law of the case, and is not open for reconsideration in the subsequent appeal. This subject was recently considered in *Illinois* v. *Illinois R. R. Co.*, (183 U. S. ——,) and it was there shown that it is the settled law of this court that, after a case has been brought here and decided, and a mandate issued to the court below, if a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the court on the first writ of error can be reheard or examined on the second. To allow a second writ of error or appeal to a court of last resort on the same questions which were open to dispute on the first would lead to endless litigation. In chancery a bill of review is sometimes allowed on petition to the court; but there would be

no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate on chances from changes in its members.

Accordingly, in the present case, everything involved in the question of the validity of the grant might be deemed to have been determined on the first appeal, as well its alleged invalidity for want of definite location, as for the want of power in the State of Sonora to make the grant. However, even if this view were waived, and it were conceded that our former mandate left it open to the government to urge the invalidity of the grant by reason of alleged want of definite location, our examination of the record has satisfied us that the final decree of the Court of Private Land Claims defining the boundaries of the grant was justified by the evidence.

It is clearly shown that on March 12, 1827, Rafael Elias presented his petition to the treasurer general of the State of Sonora, asking for a grant of public lands adjacent to the ranch of San Pedro, within the jurisdiction of Santa Cruz; that on July 1, 1827, the treasurer general issued an order directed to the alcalde of the police of Santa Cruz, empowering him to proceed to survey, appraise and offer at public sale for thirty consecutive days the lands indicated in the petition; that on August 20, 1827, in obedience to said order, the alcalde executed what is called an act of obedience, wherein he stated that he would go to the ranch of San Pedro in order to proceed with the survey of the lands petitioned for; that he appointed four citizens to act as counters, tallymen and chainmen, who were duly qualified; that the survey was so proceeded in that there resulted a segregated tract of land containing four sitios, of which Rafael Elias took possession; that, at the conclusion of the survey, the testimonio states the alcalde proceeded to the appraisement of the land through experts, who adjudged the value of the four sitios to be $240, at the rate of $60 each, and that upon this appraisement the alcalde put them up at auction, asking for bidders, for thirty consecutive days, from August 30 to September 30, 1827. On September 30, 1827, after summoning the interested party, the alcalde remitted the proceedings to the treasurer general, who transmitted them to the fiscal attorney, who on February 7, 1828, reported his opinion that "the proceedings be continued to adjudication, according to the forms and requisites in use." The testimonio then states that the treasurer general, being satisfied with the report of the fiscal attorney, by order of April 16 proceeded, asking for bidders, and none appearing, the four sitios were auctioned off in favor of Rafael Elias. The testimonio further discloses that the purchase money was duly paid into the treasury, and a certificate of the treasurer general, of April 21, 1828, concluded the proceedings; that, on December 25, 1832, followed the grant or patent by the treasurer general of the State of Sonora, stating that the proceedings had been concluded with all the requisites and formalities provided by

law, and remained in the custody of the treasurer general as a perpetual monument of title; that therefore, in the exercise of the faculties conferred on him by law, and in the name of the sovereign State of Sonora, he granted in due form of law the four sitios of land for the raising of cattle and horses, comprised in the locality of San Rafael del Valle, situated in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, to whom he conceded, gave and adjudged the said land by way of sale, with the condition and permanency established by the law, for himself and his successors, with the injunction and condition that he must keep said sitios occupied and settled, without letting them be abandoned or deserted at any time, with the understanding that if they be abandoned for the period of three consecutive years, and there should be any person to petition for them, in such event, with previous proof of the fact, they would be declared public lands and granted anew to the highest bidder, excepting in such cases where the abandonment was caused by the notorious invasion of the public enemies; and admonishing said Elias and his successors that they must keep and confine themselves to the land and limits as marked precisely in the foregoing proceedings of survey, and comply exactly with the law which imposed obligations to mark the metes and boundaries with monuments of stone and mortar. It is admitted by the government that the expediente of this grant is on file in the archives of Hermosillo, and is in the usual form, and that on folio 11 and on the back of it, of the book of "Toma de Razon," is recorded an entry of the delivery of the title deed to Rafael Elias for four sitios of land, comprised in the place called Rafael del Valle, situate in the jurisdiction of the presidio of Santa Cruz. This was followed by evidence showing the continuous possession of the tract by Rafael Elias until forced to leave it by hostile incursions of the Apache Indians. There was also proof of a regular deraignment of title from the original grantee to Canou, the appellee in the present case.

Taken together, the evidence adduced by the claimant on the first trial before the Court of Private Land Claims, and that introduced after our mandate had gone to that court, we think it is satisfactorily shown that the land described in the final decree is that described in the original survey and of which Rafael Elias was put in possession. The principal witnesses, in this part of the case, were George J. Roskruge, a surveyor of more than twenty years' experience in that part of the country, and who made the survey and map of the San Rafael del Valle land grant, which was used upon the trial. Douglass Snyder and Max Marks, who assisted in making that survey, were also examined. These witnesses were subjected to a rigorous cross-examination by the attorney of the government, and their testimony has been minutely criticised in his brief.

But we are not able to perceive that the statements of these witnesses have been materially shaken. Some discrepancies indeed appear, but they are not important, and are naturally to be expected from the nature of the case. Neither the original nor the subsequent surveys were made with the care and precision that characterize surveys made in the long settled parts of the country. But it is evident, and this is the important point, that the latter surveys were made to verify and renew the original survey, and not with a purpose to locate a floating grant of uncertain boundaries and extent. In this particular this case is plainly distinguishable from the case of *Ainsa* v. *United States*, (161 U. S. 208,) where the claimant's case failed because there had been no actual location of the grant prior to the Gadsden treaty, and because there was no satisfactory evidence that the act of juridical possession had ever taken place.

From our examination of the evidence we concur in the view of the Court of Private Land Claims, that a definite location and possession of the grant in question, prior to the date of the Gadsden treaty, are shown with reasonable certainty, and accordingly the decree of that court, confirming the claim to the extent of the four sitios granted and paid for, is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.